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THE EXPORT TRADING COMPANY ACT OF 1982

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BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

AND ITS

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

NINETY-SEVENTH CONGRESS

ON

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THE EXPORT TRADING COMPANY ACT OF 1982

WEDNESDAY, MAY 20, 1981

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met at 1:40 p.m. in room 2257, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. **Bingham**. The Subcommittee on International Economic Policy and Trade will be in order.

We begin hearings today on legislation to encourage the formation and activities of export trading associations and companies. Several bills have been referred to the Committee on Foreign Affairs, and to this subcommittee. The subcommittee will review all of those proposals, but will focus on H.R. 1799, a bill introduced by our colleague from Washington, a member of this subcommittee, Mr. Bonker. That bill, except for technical changes, is identical to legislation reported favorably to the House by the Committee on Foreign Affairs in the last Congress.

Most of the bills before this committee have been jointly referred to several other House committees. It is the intention of the Chair to move expeditiously with hearings and, if there is sufficient support in the subcommittee, to report a comprehensive bill to the full Foreign Affairs Committee, hopefully by the August recess.

At this point I believe it will be prudent and perhaps necessary to wait for the other committees involved to work their will on these bills before calling the matter up before the full Foreign Affairs Committee. That would make it possible to give full consideration to the views and recommendations of other committees at that point.

We are pleased to have with us today the Secretary of Commerce, the Honorable Malcolm Baldrige, as well as representatives of the Emergency Committee for American Trade, the Solar Industries Association, and an American trading company, Boles & Co., Inc. In subsequent hearings we will hear from other trading companies and organizations both in support and opposition to this legislation.

Mr. **Lagomarsino**. The only comment I have to make, Mr. Chairman, is that I appreciate your holding these hearings. I think this is a very important subject, one that we devoted quite a bit of attention to in the last Congress. I hope that while we certainly should be very thorough and should review all of the evidence and testimony, we would be able to move rather quickly to report out a bill and get this program going.

So, again I commend you, Mr. Chairman, for holding these hearings, and I am looking forward to hearing the witnesses.

Mr. **Bingham**. Thank you.

I understand that Mr. Bonker intended to make an opening statement; his opening statement will be incorporated in the record at this point.

Prepared Statement of Hon. Don Bonker, a Representative in Congress From the State of Washington

Mr. Chairman, a year has passed since we last met on this question of Export Trading Companies. I appreciate very much your interest and assistance in holding these hearings again. Trade is a round-the-clock activity. The Administration reported recently that "since 1960, the combined annual Export-Import trade of the U.S. has expanded from $35 billion to $473 billion, making us the world's largest trading nation."

But there is an imbalance. Our share of the world's exports has declined from 19 percent in 1968 to 13 percent in 1980. During the last 4 years our trade deficit has averaged more then $30 billion annually.

The legislation that I have introduced, H.R. 1799, is identical to the legislation passed by this subcommittee and the Foreign Affairs Committee last year.

My bill is designed to foster and promote creation of Export Trading Companies. H.R. 1799 allows the participation of banks and creates a system of certification which would immunize trading company activity from anti-trust prosecution.

The Commerce Department estimates that as many as 20,000 small to medium sized companies that currently do not export, could look abroad to market their goods if this legislation is passed.

If we look at one country in the world, Japan, because it especially affects my area of the Pacific Northwest, we can see some of our exporting problems. Since 1970 our trade imbalance with Japan has surpassed fifty billion dollars. This has also cost over a million American jobs. In Seattle one out of six jobs is dependent on foreign trade. Because of the tremendous importance of the forest products industry, exports play a vital role in the Northwest. Unfortunately, many of our exports are raw logs and not finished products. I want to emphasize that this legislation would help to overcome that problem. We want to be exporting our finished products and not our raw materials.

Trading companies can provide the legal expertise, language facility and financial ability needed to penetrate foreign markets.

The time for vacillation is over. The trading company legislation is an idea whose time has come. I am pleased that we are moving ahead on this legislation and look forward to the testimony of our distinguished witnesses.

Mr. **Bingham**. Mr. Bonker anticipated that our first witness would be the Honorable Malcolm Baldridge, Secretary of Commerce. He has been delayed and we will proceed with other witnesses, with their indulgence. We would like to interrupt when the Secretary gets here to hear from him, as his time is quite limited.

At this time we will hear from Mr. Calman J. Cohen, vice president of the Emergency Committee for American Trade.

STATEMENT OF CALMAN J. COHEN, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE [ECAT]

Mr. **Cohen**. Thank you.

Mr. Chairman and members of the subcommittee, I am Calman J. Cohen, vice president of the Emergency Committee for American Trade [ECAT]. ECAT is an organization of the leaders of 63 large U.S. business firms with extensive overseas business interests. ECAT member companies are major exporters. They had 1980 worldwide sales of close to $600 billion and employed over 5 million people. Our purpose is to advocate and support international trade, investment, and tax policies that will expand U.S. international commerce.

The opportunity to appear before you today to express some of our views about export trading company legislation is very much appreciated.

U.S. COMPETITIVENESS

At the outset, before commenting on the specifics of the pending legislation, I want to note for the record the view of ECAT member companies that steps need to be taken to improve U.S. competitiveness in world markets. The United States dominated the international trade arena in the period following World War II. The economies of the Western European states and of Japan were shattered while our economy was intact. Although we were able easily to outproduce Western Europe and Japan, we realized that it was in our own national interest to bolster them economically. With the assistance that we provided, they have since gone on to repair their economic engines to once again become strong competitors in the trade field. We realize it was in our own national interest to help them recover.

The statistics on our share of world trade tell the story well. Over the period between 1960 and 1980, our share of exports, in absolute terms, to the major Western industrialized countries declined by one-third. In 1960 we enjoyed approximately 21 percent of such trade. By 1980 it was down to some 14 percent. As a 1980 study prepared for the Congress noted: "The United States has suffered a decline in its competitive position in certain product areas since the late 1960's as a result of improvement in the competitive position of other countries."

Furthermore, the renewed strength of the U.S. dollar vis-a-vis other currencies will have the somewhat paradoxical effect of a weakening of the U.S. export performance. As Penelope Hartland-Thunberg has forecast in her recent essay: "Has the U.S. Export Problem Been Solved," we should see "a decline of U.S. exports and an increase in U.S. imports following the well-established lag of 12 to 18 months."

So, although we see some improvement in our share of export markets and also in our trade balance, the expectation is that within a year and a half we will see some change again and not for the better.

To try to improve the situation, Government could markedly step up export promotion programs. Yet such programs are costly and in times of economic limits, such as today, they are more easily phased out than phased in.

A less expensive and more efficient way to proceed may well be through policies, consistent with national economic objectives, designed to allow the private sector itself to take the necessary steps to foster exports. In a time of governmental belt-tightening, we may best achieve our goal of promoting international commerce by restructuring the domestic environment for exports. Through appropriate organizational structures, such as export trading companies, export promotion can be advanced at no or little cost to the Government.

Certainly I do not want to suggest that trading companies are a panacea; they will not be the complete solution to our current trade problems. However, they can make a serious contribution by developing the export infrastructure available to American companies involved in trade in either goods or services.

In an age where political power is grounded in economic power, it is absolutely essential that we adopt such measures as have the potential to contribute to our overall economic well-being. The establishment of trading companies appears to be one such measure.

PURPOSE OF TRADING COMPANIES

The case for trading companies is not unlike the case for export promotion which was made in 1918. The Federal Trade Commission reported then that the threat of antitrust prosecution led American companies to draw back from cooperating with one another to challenge foreign cartels. The legislative response of the Congress was the Export Trade Act of 1918, commonly known as the Webb-Pomerene Act, which provides a limited exemption from the antitrust statutes.

Today, again, companies steer away all too often from export trade activities because of the threat of antitrust litigation. They fear that such activities would subject them to costly and time-consuming litigation because of the lack of clarity in the law.

The trading company legislation pending before the Congress is designed to deal with this situation and, thereby, serve as a spur to U.S. export activity. U.S. business will be able under the legislation to learn in advance whether activities which they wish to undertake could lead to antitrust litigation.

The export trading companies themselves could provide to firms virtually all the services necessary to market and sell abroad. They are expected to enable many thousands of small- and medium-sized businesses to venture for the first time into the international trade arena, which would be too difficult a proposition for any of them individually. Most importantly, in many developing regions of the world—where the United States has consistently enjoyed a large share of its market and where new sales and distribution networks are often rudimentary—export trading companies have a major potential. They can take on and perform well the brokering role between sellers and buyers for industrial and agricultural products that will be in increasing demand throughout the developing world.

ECAT wishes to commend this committee for its leadership in promoting trading company legislation in this and the previous session of the Congress. As with so much else in the international trade field, the initiative with trading companies lies with the Congress rather than with the Executive. ECAT is optimistic that the committee—together with the Banking Committee, which collectively shares jurisdiction—will successfully devise a legislative vehicle that will receive the support of the full House.

THE ANTITRUST PROVISIONS

We at ECAT recognize the need for any export trading company legislation to provide a certification process for firms that wish to cooperate in their export activities. Through this process, certainty should be established as to the antitrust immunity provided the firms under the Webb-Pomerene Act of 1918. The certainty should also apply to export trading companies formed under the legislation.

I would emphasize that absent the certainty which would be provided by the certification procedure, companies would remain reluctant to work together to promote exports under the Webb-Pomerene Act.

One of the arguments that has been advanced in opposition to just such a certification process is that it will prove to be excessively bureaucratic. I might also note that the concept of the certification process has received the endorsement of both Democratic and Republican administrations. We believe that this speaks well for it.

ECAT supports, in particular, the certification process set out in title II of H.R. 1648. It achieves what we believe is the proper balance between export promotion and proper antitrust enforcement in the area of business conduct.

I would also like to note for the record that ECAT has recommended linking in one legislative vehicle export trading company legislation, which in its antitrust provisions is largely of a procedural nature, with substantial changes in the actual antitrust States themselves.

The latter is contemplated in H.R. 2326, the Foreign Trade Antitrust Improvements Act of 1981. While it will not provide certainty as to the application of Federal antitrust laws to extraterritorial conduct—which is the particular need of the business community, if it is to work together better to promote exports—it will clarify the application of the Sherman and Clayton Acts to extraterritorial conduct of U.S. business. And in this particular sense, it represents a positive step in the right direction.

BANKING PROVISIONS

ECAT supports title I, the export trading companies title of H.R. 1799, which will allow for bank participation in export trading companies.

I think it is important to point out that the ability of banks to participate in trading companies is not a requirement that all trading companies are to have bank participation. Bank participation will remain an option and nothing more.

ECAT believes, however, that it is an important option. Banks have a great deal by way of resources to contribute to the operation of trading companies. Through their domestic and international experience, they are in an excellent position to identify companies which have products to export as well as overseas markets where those companies' products could be sold. For these purposes, they can make use of their domestic offices and their overseas affiliates.

Financing will be most important to the operation of many export trading companies. Indeed, in export sales time and time again financing has been identified as the factor that can make or break deals. With bank participation in domestic export trading companies, they will also increase their ability to offer the range of financial services now offered by foreign trading companies.

Majority participation by banks in export trading companies is permissible under H.R. 1799, with the approval of appropriate bank regulatory agencies, and has the support of ECAT. It can serve as a way for banks to protect better their investment in and loans to export trading companies and, thereby, to minimize any risk from their exposure. In addition, it may encourage banks to form export trading companies for specific purposes which may be more limited than those of export trading companies formed by others.

ECAT commends the committee, its chairman and its members, for the leadership they have demonstrated in promoting export trading company legislation. The member companies of ECAT look forward to continuing to work with the committee on this and other legislation to improve U.S. competitiveness.

Thank you.

Mr. BINGHAM. Thank you, Mr. Cohen.

The Chair would now recognize the gentleman from Washington, our colleague Mr. Bonker, for his opening statement.

Mr. BONKER. Thank you, Mr. Chairman.

I apologize for being late to this hearing. I do want to take this opportunity to thank you for your efforts in support of this legislation. I am convinced that would it have passed in the last session if we had had more time, that it would have been accomplished primarily because you took the time to meet with the various committee chairmen to negotiate something of a compromise that would have allowed the House to vote on a bill in the 96th session.

I think the legislation is important in the trade picture. Presently less than 2 percent of the U.S. industry now participates in the world market, and when this is compared with between 60 and 80 percent among specific countries, we can see the dimensions of the problem. They encourage their small- and medium-sized firms to be involved in the world market where we seem to have too many obstacles and inhibitions for those size firms in the United States to be competitive.

Passage of this bill to allow the formation of trading companies will make it possible for the medium- and small-sized firms to be more competitive and will greatly enhance our overall trade status. The bill has both substantive and symbolic importance, substantive importance in that we remove some of the legal problems and provide for bank participation and make it possible for these trading companies to be established; symbolic importance because I think it will cause a tremendous interest, an aroused interest in the great potential that exists in the trading companies.

I have had an opportunity to address fairly sizable groups both here in Washington, D.C., and also in the Northwest, and I can tell you that there is considerable interest in this legislation not only because it makes it possible for these firms to form trading companies but also because of the great potential that exists.

I am confident that the Congress is going to act. We know there is widespread support within the House for the bill and the other committee chairmen who had expressed concerns earlier seem to have reconciled those problems, so I am excited about the possibility of this bill passing this year.

Mr. **Bingham**. Thank you very much.

Mr. **Bonker**. Thank you, Mr. Chairman.

Mr. **Bingham**. We will now hear from Mr. Bradford Mead of Grumman International, representing the Solar Energy Industries Association.

Mr. Mead.

STATEMENT OF BRADFORD MEAD, DIRECTOR, INTERNATIONAL ENERGY PROGRAMS, GRUMMAN INTERNATIONAL; CHAIRMAN, INTERNATIONAL TRADE COMMITTEE, THE SOLAR ENERGY INDUSTRIES ASSOCIATION

Mr. **Mead**. Good morning, Mr. Chairman. I am Bradford Mead, chairman of the International Trade Committee of the Solar Energy Industries Association and director of International Energy Programs for the Grumman Corp. Grumman is one of the largest producers of solar hot water systems in this country and is very actively involved in the promotion of this equipment overseas.

EXPORT POTENTIAL IN SOLAR INDUSTRY

Mr. Chairman, the American solar industry has a tremendous opportunity before it in the form of export markets. The Solar Energy Research Institute has determined that in 1979 over 20 percent of the solar equipment production in this country was exported. More importantly, of the some 350 companies in 1979 which produced equipment in the United States, over one-fourth are actively involved in the export of their equipment.

The Department of Commerce reports that only 10 percent of all U.S. manufacturers are exporting. It would appear the solar industry has gotten off to a good start in the international marketplace, but in terms of dollar volume, 21 companies out of 350 accounted for 75 percent of the total solar exports. These 21 companies, in almost all cases, represent sizable firms with at least a reasonable understanding of how to market and service their equipment overseas. The rest of the industry is finding a high degree of interest in its technology and equipment from overseas buyers.

NEED FOR TRADING COMPANIES

The inability of the small- and medium-size firms to work the sale and bring to bear the skills and services required to actually close the deal is sending this business to our foreign competitors who are better equipped to respond.

Mr. Chairman, the proposed legislation to enable the establishment of export trading companies is strongly supported by the solar industry. We believe that the technology developed in this country, as a result of keen competition and strong government support, is the best in the world. The flood of foreign buyer interest to American exhibitions, as well as the present level of exports to date, would seem to attest that the international markets believe this also. However, the number of overseas markets American industry is capable of addressing is limited for three main reasons:

Insufficient capital is available for development of overseas markets.

U.S. solar exporters lack knowledge of how to develop these markets.

Suitable solar energy products appropriate for developing nations are lacking.

The proposed trading company legislation in particular would serve to provide solutions to these factors and to accelerate the market expansion in a number of ways.

UTILIZATION OF BANKING INSTITUTIONS

First, the availability of contacts and introductions through the offices of foreign branches of U.S. banks are invaluable in beginning dialog.

Second, these same offices will be able to offer financing as well as handle the various instruments of currency exchange, including in many cases the acceptance of payments in local currencies. It is the actual transaction and handling of letters of credit, bank transfers, and the like that are very much a black art to potential exporting companies. The establishment of export trading companies will allow this very cumbersome burden to be centralized with the experts at the local bank offices.

Third, the years of experience of the foreign branches of banking institutions will allow for both a greater assessment of the risks involved in transactions and the professional contractual experience to reduce that risk to acceptable legal form. Most potential exporters utilize their local legal counsel for all their business matters. This counsel is unlikely to have a familiarity with foreign laws, foreign customs, or even the language problems that are very much a part of doing international business. This experience will be provided by the bank acting through its offices.

Finally, Mr. Chairman, the enactment of this bill will serve a much more general purpose, one that has been traditionally lacking in most U.S. company export programs and, in particular, the U.S. solar industry: the principle of strategic planning. Proper planning, the establishment of goals, and market research are not normal routines for most solar exporters. Indeed, the push to get the sale—any sale—has resulted in a shortsighted approach to international marketing.

It is important that any exporter understand: first, his market; second, how his product must be modified to fit that market; third, how to reach it properly and, more importantly, profitably. The addition of the banking community as a partner in the exporting process will undoubtedly serve to elevate the exporting industry to a higher quality level of business.

Justifiably concerned about the image they have carefully cultivated in their foreign markets, the banks will strongly encourage a longer term, more strategically planned approach to product development and exporting. This can only serve to strengthen the foundation upon which any industry will build and, indeed, lead to a greater customer confidence in American built and bought equipment.

This completes my testimony, Mr. Chairman, and I would be happy to answer any questions.

Mr. BINGHAM. Thank you very much, Mr. Mead.

Mr. MEAD. Thank you.

Mr. BINGHAM. The Secretary of Commerce has now arrived.

We welcome you, Mr. Secretary. We understand that your time is limited and we will be glad to hear from you now.

You may summarize your statement and without objection it will appear in full in the committee hearing transcript. Then we will proceed to ask questions of the Secretary, if the other members of the panel will indulge us.

We welcome you to the subcommittee, Mr. Secretary, and we hope this is the first of a number of appearances you may make before our subcommittee.

STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY OF COMMERCE

Secretary BALDRIGE. Thank you very much for your kindness. I would like to make just a short number of remarks on this bill. I would like to emphasize that banks can play an important role in developing successful export trading companies because of their management skill and financial resources.

H.R. 1648

We feel that H.R. 1648 permits banks to take a leading role in export financing while safeguarding the financial system against any risks resulting from such participation.

As far as safeguarding, the three bills prohibit preferential bank lending and require the exercise of the same credit standards as those used in other banking activities and limiting aggregate bank participation in export trading company [ETC] investment. Moreover, any initial investment by banking institutions in an export trade subsidiary must be specifically approved by a Federal banking agency.

We feel that an important element in the success of ETC's is the need to clarify existing antitrust laws. The administration fully understands business' need to engage in specific export activity without fear of prosecution under the antitrust laws, and we also understand the need for antitrust enforcement to protect the domestic economy from anticompetitive behavior.

H.R. 1648 offers the best approach to these needs. It would provide a certification procedure enabling export trading companies to obtain antitrust preclearance for specified export trade operations.

Since the underlying purpose of export trading company legislation is export promotion, no certification can be issued unless a proposed ETC would serve to preserve or promote U.S. export trade.

Additionally, it would revise the Webb-Pomerene Act to clarify the antitrust positions applicable to export trade associations and export trading companies. It would also extend the act's coverage to the export of services, which I feel is a very important point, and transfer administrative responsibility for Webb-Pomerene from the FTC to the Commerce Department.

Also the Antitrust Department of the Department of Justice and the FTC would have an important consultative role in the certification process and would have full authority to investigate and amend or validate the certificate.

Finally, the administration believes it is unnecessary to require the establishment of a special Office of Export Trade. The ITA under the Commerce Department could administer title II of this without additional resources.

In summary, Mr. Chairman, we believe that the need to increase U.S. exports is a compelling reason to make an exception from the general principle of separating banking and commerce.

Thank you very much, Mr. Chairman. I would be glad to take any questions.

[Secretary Baldrige's prepared statement follows:]

PREPARED STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY OF COMMERCE

THE NEED FOR EXPORT TRADING COMPANIES

Mr. Chairman and members of the Committee, I am pleased to be here to discuss with you the need for export trading company legislation. This Administration believes that the creation of export trading companies is necessary to the continuing effort to improve U.S. export performance.

Exports play a vital role in the U.S. economy. The need for increased exports will become even more important in the years to come. The U.S. has been running tremendous trade deficits. Our trade deficit for 1980 was $24 billion. In order to pay for the imported goods and services we require we must increase our exports.

U.S. exports pay for our imports of oil and other necessary or desirable commodities and preserve and create jobs in the United States.

Most U.S. exports come from the largest U.S. corporations, with one percent of our U.S. firms responsible for 80 percent of our exports. If we are to offset U.S. trade deficits by export expansion, we must develop new ways to provide opportunities for thousands of small and medium sized American firms.

Enactment of export trading legislation will provide the mechanism to stimulate and train these smaller firms in how to export just as their foreign competitors are doing.

A January 1981 survey of U.S. public attitudes toward our balance of trade problems revealed widespread support for the formation of export trading companies. Cambridge Reports, Inc., at the request of Union Carbide Corporation, surveyed 1200 Americans on U.S. foreign trade and competitiveness in world markets. Of those responding with an opinion:

More than 80 percent favored setting up trading companies that would sell abroad for smaller American companies that have trouble doing so on their own.

Seventy percent favored allowing U.S. companies to sell jointly in foreign markets, even if such conduct in the United States would be prohibited under our antitrust laws.

Export trading company legislation must meet two criteria to be successful:

First, it must include provisions for bank ownership participation in export trading companies.

Second, it must provide a way for businessmen to insure that they will not run afoul of the antitrust laws in their export activities.

H.R. 1648, strongly supported by this Administration, will achieve both these aims. This bill is nearly identical to S. 734 which unanimously passed the Senate on April 8, 1981.

THE NEED FOR BANK PARTICIPATION

Banks can play an important role in developing successful export trading companies because of their management skill and financial resources. H.R. 1648, H.R. 1799 and H.R. 2123 permit banks to take a leading role in export trading company operations while safeguarding the financial system against any risks resulting from such participation.

The proposed legislation contains conditions and requirements that are more than adequate to meet any concerns raised about bank ownership of export trading companies. We would oppose any greater restrictions on bank equity participation such as those proposed in H.R. 2851.

These three bills prohibit preferential bank lending to any affiliated export trading company or its customers. Banking organizations would have to exercise the same credit judgment in lending to export trading companies as they do in other banking activities. These bills also limit aggregate banking investments in export trading companies.

The bills vest bank regulatory agencies—the Federal Reserve, Comptroller of the Currency, FDIC, FHLBB—with authority to establish standards, guidelines, regulations, inventory-to-capital ratios, and other requirements governing the activities of export trading companies with commercial bank involvement.

Any initial investment by a banking institution in an export trade subsidiary must be specifically approved by a Federal banking agency. All this is in addition to a stringent statutory limitation of total investments (equity and loans) in export trading companies to 10 percent of a bank's capital.

NEED FOR CLARIFICATION OF THE ANTITRUST LAWS

The participation of the banks, alone, will not ensure that small businesses will form export trading companies. It is equally important to clarify the existing antitrust laws in order to provide American business with an assurance that their export activity will not subject them to antitrust liability.

The Administration fully understands business' need to engage in specific export activity without fear of liability under the antitrust laws. We also understand the need for antitrust enforcement to protect the domestic economy from anti-competitive behavior. H.R. 1648 offers the best approach to these needs.

The bill would revise the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and export trading companies. It would also extend that Act's coverage to the export of services and transfer administrative responsibility for Webb-Pomerene from the FTC to the Commerce Department.

Most importantly, it would provide a certification procedure which would enable export trading companies to obtain antitrust pre-clearance for specified export trade operations.

The underlying purpose of export trading company legislation is export promotion, since no certification can issue unless a proposed ETC would serve to preserve or promote U.S. export trade.

Another export trading company bill, H.R. 2326, currently being considered by the Judiciary Committee does not include the preclearance certification procedure and, therefore, would not provide an export trading company with the necessary assurances against exposure to antitrust liability. As a result, those forming an export trading company would not have the same degree of confidence as to the legality of their actions available under a certification procedure.

Certification—which provides a listing of those activities deemed within the scope of the antitrust exemption—offers a far more satisfactory solution to the problem of antitrust clarification and offers maximum protection from treble damage suits.

Also, the Department of Justice and the Federal Trade Commission have an important consultative role in the certification process and retain full authority to investigate and seek to amend or invalidate the certificate.

Finally, the Administration believes it is unnecessary to require the establishment of a special office of export trade. We cannot support those sections of H.R. 1648 that would provide for new authorizations for such an office (sections 106 and 107). The International Trade Administration of the Commerce Department could administer title II without additional resources.

CONCLUSION

In summary, Mr. Chairman, we believe the need to increase U.S. exports is a compelling reason to make an exception from the general principle of separating banking and commerce. H.R. 1648 provides such an exception. The limitations and protection of title I are adequate to safeguard the integrity of our financial system.

Additionally, the business community must have assurance that specified cooperative export activity will not lead to antitrust liability. We believe the procedure in title II for obtaining a certification of antitrust immunity will enable most businessmen to obtain just this assurance, while at the same time providing safeguards to protect competitive principles.

Export trading companies will substantially improve our ability to compete for export business world-wide. The provisions in H.R. 1648 represent the most effective way to accomplish this purpose.

Mr. **Bingham**. Thank you, Mr. Secretary.

I take it there is no one bill that the administration has settled on as containing all of the provisions you would like to see; all three bills contain appropriate provisions for bank participation that you mentioned.

That is, the three bills contain appropriate provisions with regard to antitrust provisions, but in your view only one, H.R. 1648, is satisfactory with regard to the banking provisions. Is that correct?

Secretary **Baldrige**. Since the three bills have almost identical banking provisions, I would not favor one bill over another for that reason; however, we would favor H.R. 1648 over the other two for its antitrust provisions.

Mr. **Bingham**. That is, comparing the various bills, it is not entirely complete in this critique but it includes those provisions that the Secretary mentions.

BANK INVOLVEMENT WITH ETC'S

Mr. Secretary, there has been some concern in the Congress about bank control of trading companies if banks are permitted to invest in them. This could entail, on the one hand, a possible interference with the independence of the trading companies; on the other, one could say that this is really not a traditional banking function and the banks ought to stick to their traditional role.

What is your comment on that?

Secretary **Baldrige**. First, Mr. Chairman, the bank could not take control in a practical sense without receiving the prior approval of the appropriate Federal banking agency. I am sure that would not be lightly given. They can make an aggregate investment of not more than 5 percent of their consolidated capital in one or more ETC's. We feel that that perhaps is more of a strawman than an actual problem.

The banks are vital, in my opinion, to successful use of the ETC concept because what we are trying to do here is not so much help the large companies. They already know how to export and, as a matter of fact, 1 percent of our companies are doing 80 percent of our exports. We are trying to help the medium and smaller sized companies, because our competitors abroad make far better use of their medium sized and small manufacturers than we do.

We believe it is important to export in the next decade for the sake of our GNP and/or for the sake of our dollar and the balance of payments and all of the reasons you already know. They are going to need banks to help them. We should not be so restrictive as to set up strawmen that we take away the positive attributes that a bank can lend to this kind of an arrangement.

CHANGES IN WEBB-POMERENE

Mr. **Bingham**. Mr. Secretary, when we were considering this type of legislation in the last Congress, it appeared that the proposed criteria for exemption from the antitrust laws for export trading companies was more restrictive than criteria under the current Webb-Pomerene Act.

Could you comment on that situation? Is it your intention to impose more or less restrictive antitrust standards or simply to provide for precertification procedures without changing the standards?

Secretary **Baldrige**. Well, I think the important part there, sir, is the preclearance. May I just address this from a businessman's point of view?

Mr. **Bingham**. Certainly.

Secretary **Baldrige**. Businessmen don't know what the heck to export under Webb-Pomerene because they don't understand it. It is vague enough so that they just don't know what kind of potential trouble they can get into. So when you talk about being more restrictive in the outline of the act here, that is a two-way street. It clarifies greatly for the businessman what is exemptible and what isn't. That helps him more than it hurts him, as long as we end up with a preclearance certificate so that he knows he is not going to get slammed 5 years down the road for wandering into an area that he really didn't understand was out of line, or something like that.

Now, the penalties on that are as you know treble damages for whatever has gone on in the past. This would have the preclearance procedure. If companies did not follow what they were set up by the preclearance to do, we could stop them dead in their tracks right there. But they would not, because of inadvertence, get into such expensive treble damage suits that they are afraid to put their foot in the water in the first place. That is what is killing us, compared to our trading competitors.

Germany and Japan and France don't have any kind of legislation like that. They just go ahead and start. They set up and they have to notify the government they are setting it up but they don't have to be responsible for their actions after that.

Mr. **Bingham**. Then you run into the problem presented to us very forcefully last year; there are some associations that are operating quite happily under the Webb-Pomerene Act and have been doing so successfully for years.

The motion picture industry is probably the outstanding example. They are worried that any legislation in this field would require certification and a new type of certification will put them under a cloud of uncertainty which they haven't felt in the past. They would like some kind of grandfathering so as to assure them that they can go on doing business under Webb-Pomerene as they have been for years.

Secretary **Baldridge**. I think you can count on the fingers of your right hand the companies that are operating under Webb-Pomerene. That act has been around since World War II, and five groups have gotten together on that and it has not been a very effective act, obviously. I understand the motion picture business did and it seemed to have worked for homogenous commodity kinds of businesses but not for manufacturing businesses, and high technology, or anything like that.

I don't see where they are doing anything but setting up another bogeyman by asserting fears that ETC's would affect companies presently existing under Webb-Pomerene. We are talking here about increasing exports because we have to. We are talking about preclearing people so they can get together in groups for export activities only and not for domestic purposes that would be illegal, under our antitrust laws, inside the continental borders. If their activities are in fact restricted as an association to exports, and not what to goes on inside the United States, they should have no more trouble in getting preclearance than any other group.

Mr. **Bingham**. Thank you.

Mr. Lagomarsino.

Mr. **Lagomarsino**. Thank you, Mr. Chairman.

Mr. Secretary, I want to compliment you on your testimony. I think it is very helpful. It is very clear. It is not difficult to understand; I think all of us on this committee are well aware of the problem we are seeking to solve.

I would suggest another good reason for doing this and passing this legislation, which, hopefully we can do rather soon, is to show that at least on this one very, very important subject, the administration and the Congress can come to a common goal together and swiftly enact needed and desirable legislation. We can show the companies that would be involved in this, or who are interested or should be interested, that at least in this one area we are going to start very quickly in showing that Government is going to stop being an opponent, at least as they view it, to being a supporter, or at least an active partner, and one who is seeking to help them accomplish their goals.

NO BANKING MONOPOLY

So I believe the symbolism of doing this is perhaps as important as what it will actually do legislatively. I can't stress too much how important I think this particular piece of legislation is, and I hope we can act quickly.

Some people, Mr. Secretary, say that if banks are allowed to participate in forming export trading companies, there is a danger that a few banks could end up dominating the field. How would you respond to that fear?

Secretary **Baldrige**. I just don't think that that is a practical fear at all. I have talked to some of the major banks and asked how much interest they would have in participating in this. Their response varies quite a bit. Without going into names, taking the first five banks in New York, two or three of them would have an interest in it and another two or three would not, particularly. I don't mean that they wouldn't get into it but they are not looking at it as a main thrust. It is simply because they are already heavily involved in overseas finance through a number of other ways and they don't look on this as a particular big plus for their own activities.

The kind of banks that I am convinced would be interested in this are the regional banks, medium sized perhaps, but it is well known that a good many of those banks now have offices in several places outside the United States. I know several banks with footings of $500 million to $700 million, far from being one of the largest banks, that have offices in London or Tokyo because they have a particular interest in serving people there.

If they don't, as in the case of a good many banks, have offices abroad, they all have correspondent relationships. All of that will help a bank get together with some good potential exporters, medium and smaller companies, and provide them with kind of a one-stop service and help that they need. No one of them can either afford to take the time or thinks, I think this is more important, they can't afford to get into exports. It looks like a big place to them and they are always putting it off.

The sad fact is that today we have grown a whole generation of companies that have not had to export, where our competitors around the world have had to in order to live. Their feet have been held to the fire for a long time and they have learned how to do it and our medium- and small-sized manufacturers just haven't.

EXPORTING INCREASINGLY DIFFICULT

Mr. **Lagomarsino**. Before you came in, one of the witnesses made a very valid point, which was that with the increase in the value of our dollar vis-a-vis other currencies, it is going to be even more difficult for us to export. We are going to need a lot more help and we are going to have to be more sophisticated about this.

Secretary **Baldrige**. We are seeing a two-edged sword. We have seen our exports go up in the last couple of years but that was due to the devaluation of the dollar in 1977 and 1978, and the fact that our own economy last year was lagging, which hurt imports.

Now we are seeing the value of the dollar go up, which is going to make exports more expensive for the potential importer, and that is going to hurt us. On the other hand, we are seeing a broad definite slow-down in the economies of our major trading partners. Zero to 1 percent growth is involved in country after country. That means that their ability to buy exports is going to be hampered, and so we have two things working against us now. One is the dollar is higher and the other is the economies of those countries abroad for the future, and perhaps for the next decade, are going to grow slower than they did in the last era. So they are going to be less able to buy our exports. We are going to have some tough times ahead.

Mr. **Lagomarsino**. If banks aren't permitted to give preferential treatment to their own trading companies, and I think that is probably a proper provision in this legislation, you might ask what incentive there is for those banks to participate at all.

Secretary **Baldrige**. Well, they have the equity incentive, which is a very large incentive, and I think that would be No. 1. There are other banking relationships that go along without necessarily lending money. Those can accrue to them. I think the equity part is the major one.

Mr. **Lagomarsino**. Thank you.

Mr. **Bingham**. Thank you.

Under the new rule I recognize Mr. Shamansky.

POSSIBLE DOMESTIC VIOLATIONS SLIGHT

Mr. **Shamansky**. Mr. Secretary, I can understand the value to a smaller company which doesn't have experience in the export trading business, with respect to antitrust certification, although in this era of wanting to get rid of more Government regulation I am willing to accept the necessity for that, but what bothers me is this: If the certification can be revoked after a proper hearing, which would indicate that there was a domestic violation and antitrust activity, there is no provision for those people harmed domestically to get any damages. That is where I have trouble with this idea.

Secretary **Baldrige**. Well, Congressman, if we just look at that from a practical viewpoint, if the export trading company is set up and we are satisfied it is so as to export, we have reached an agreement, for example, with the Justice Department that we would be for an amendment saying if two companies, and this can frequently happen, if they are in a small segment of a certain market and combined have over 50 percent of this total market, they would have to show a very clear, cogent reason for forming an export trading company.

The Department of Justice was worried about the occasions that this would throw them together and they might talk about the domestic market. If they are set up for export trading companies, I think that the odds, the practical odds of them conspiring in any way in the United States are really not that great. If it were to happen we have between the Commerce Department and Justice Department and the FTC ways of seeing when a possibility arises. We can see by some of the results. We can step in right away.

The part that you mention that is removed is the treble damage part, the simple damage part for things that happen or could possibly happen before the action was stopped.

Mr. **Shamansky**. All I am getting at is that there is a process for decertification because of a violation by the certificated holders, which would be as I understand it a violation of antitrust within this country for which they had a certificate that exempted them from that. If there is a basis for decertification, to me it implies that somebody may well have been hurt domestically.

You keep mentioning treble damages but I am concerned with simple equity with simple damages. There is no possibility of the harmed party getting any kind of damages, although we recognize that the Department could revoke the certification for a violation of the antitrust laws. That just splits off from me and I don't understand it.

Secretary **Baldrige**. If you put yourself in the place of a manufacturer now, without precertification he does not know when literally he is getting on the borderline of being in trouble. Literally he can be surprised by, if I may use this expression, some active aggressive young lawyers trying to make a reputation, either in the Justice Department or FTC, trying to expand law in new areas when there is an honest difference of opinion between the companies' lawyers and theirs.

So there is the fear, I am not talking about whether this is correct or not, but the fear in the companies' minds of what could happen on antitrust actions, a very real fear. Unless we remove that we are not going to give the help we want.

CERTIFICATION PROCESS

Mr. **Shamansky**. As a business practicing lawyer I would always like to ask how many cases like that do we see, and I don't see any. Second, we are talking about a presumption that, with certification, the people who are exporting under the Export Trading Company Act would have a prima facie exemption; at least they would know going into it that what they planned to do appeared satisfactory to the Department of Commerce. That would certainly deter these hot-shot young lawyers to whom you allude.

But if, in fact, these companies did violate the law and did warrant the rescission of the certification, why would the harmed party not be entitled to simple damages?

Secretary **Baldrige**. Well, as I understand it, Congressman, the certification does not protect ETC's from damages for domestic violations, if that is your point.[1]

Mr. **Shamansky**. I guess that was my point because my information is that right now it is not a violation if they engage in these practices outside of the United States.

Secretary **Baldrige**. That is right, but if they did inside the United States, it is a violation.

Mr. **Shamansky**. If it comes back in the United States, then it is a violation in the United States?

Secretary **Baldrige**. Let me check that with our General Counsel.

This is Mr. Unger, the General Counsel.

STATEMENT OF SHERMAN E. UNGER, GENERAL COUNSEL, U.S. DEPARTMENT OF COMMERCE

Mr. **Unger**. As I understand the question, you are asking about domestic damages. The certification does not protect an ETC from any conduct that would occasion domestic damages where it is certified or decertified.

Mr. **Shamansky**. It does not exempt them?

Mr. **Unger**. It does not protect them.

Mr. **Shamansky**. If there is domestic harm?

Mr. **Unger**. Then they are liable.

Mr. **Shamansky**. Then the exemption applies only to precisely what?

Mr. **Unger**. Activities covered by the certification.

Mr. **Shamansky**. OK.

Mr. **Bingham**. Mr. Wolpe.

Mr. **Wolpe**. Thank you, Mr. Chairman.

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[1] The Secretary later submitted this additional comment for the record: "In the certification process, we would certainly scrutinize all applications closely to satisfy ourselves that domestic competitors or consumers would not be harmed. If, despite our best efforts, the activities which we certified hurt someone domestically, then you are correct that decertification would be the remedy and that there would be no single damages for harm caused by those certified activities. If, however, the harm was caused by activities other than those that were certified, then the association would be subject to antitrust remedies which could include a private suit for treble damages."

You are aware, Mr. Secretary, that this subcommittee has very agressively tried to find means of encouraging export expansion, and the legislation before us now enjoyed unanimous support last year. I was pleased to cosponsor it myself, and I hope we will be able to emerge in this session with the particular accomplishments of this bill.

PRESENT ANTITRUST RESTRICTIONS

There have been questions raised with respect to some of the claims that have motivated the introduction of the legislation. I speak specifically to the whole question of the way in which current antitrust laws, or at least current interpretation of those laws, is deterring American companies from competing more effectively in foreign markets.

I wonder if you could lay out more precisely what American companies could do to compete more effectively in foreign markets that the antitrust laws prohibit them from doing now?

Secretary **Baldrige**. Well, they are prohibited from getting together in cartels—a word that always had bad overtones—to export. That is prohibited now; you can't get together with your competitor and set up an export cartel to meet German or Japanese competition in a foreign country.

If you run afoul of any domestic law in your activities overseas, the perception definitely is that you will be liable for antitrust litigation in the United States.

Mr. **Wolpe**. Now, the Webb-Pomerene Act was initially intended to overcome that specific antitrust obstacle?

Secretary **Baldrige**. Yes. The lawyers—and I don't want to sound like an adversary to the lawyers; my father was a lawyer——

Mr. **Wolpe**. Some of my best friends are lawyers.

Secretary **Baldrige**. But the lawyers would say, "Well, yes, the Webb-Pomerene Act does give them some security in that area."

The fact is that in the 60-odd years the Webb-Pomerene Act has been in effect, manufacturers clearly do not feel that they have the necessary protection.

Mr. **Wolpe**. I understand that. I am trying to pinpoint precisely why, and what beyond the Webb-Pomerene Act is it that they are barred from doing, or feel that they are barred from doing as a consequence of the present structure of antitrust laws?

Secretary **Baldrige**. Now, to understand that you have to put yourself in the place of a medium-sized or smaller manufacturer, and forget that you have ever been a member of the bar.

Every manufacturer in this country understands something about our antitrust laws. He knows that he can't fix prices and he has seen people go to jail for that; and he knows you can't get together with your competitors and do anything that would in the way of buy-outs or sell-outs that would give you more than a certain share of the market. He is very unclear on what that share of the market would be, and the FTC will not tell him ahead of time without going through a long, tedious process, and the Justice Department won't either, and he has no way to clarify that.

You can see he ought to be willing to go through all of that and get some kind of an answer; but the fact is that there have been enough buffers so that the typical manufacturer views the U.S. Government and the FTC and the Justice Department, particularly, as an adversary, as someone who is out to get him, and, boy, if he makes one slip, unintended or not, he is liable to either end up in jail or be liable for treble damages.

Now, you can say he ought to be more sophisticated and ought to understand the law better, but the fact is that there is still a lack of clarity in the FTC and Justice Department rulings that give him good reason for pause. I have been through that enough myself to see it.

Mr. **Wolpe**. So you are saying that the issue may be one of perception rather than reality, that it is not the structure of the law itself, that it is not the barrier but, rather, the way it has been perceived?

Secretary **Baldrige**. Well, I think that perception is reality in this case, except that perception is perhaps stronger than the actual reality, but they are not that far apart, because there has been new ground broken in every decade under our antitrust laws and under the FTC rulings about what manufacturers can and cannot do.

It is impossible for a medium- or small-sized manufacturer to be on top of that.

Mr. **Wolpe**. I understand that, but the thing I want to——

Mr. **Bingham**. The gentleman's time has expired and the Secretary is limited as to time.

I would suggest to the members that they can submit additional questions in writing, which I am sure the witnesses would be glad to answer.

Also, I would like to point out that under some antitrust measures the Judiciary Committee does have preliminary jurisdiction.

DIFFICULTIES FACING SMALL BUSINESSES

Mrs. **Fenwick**. I have been waiting for this a long time. Juanita Krepps and I discussed this years ago, not because I am a small manufacturer, but because I have heard from businessmen in my district, and not only in my district but also in Louisiana, when I was sitting on the Small Business Committee under the chairmanship of Bill Hundgate. It is a very real problem.

The small company feels there is no use in trying for foreign trade. Apparently they go to the Justice Department first. One company official reported this: He or a friend of his thought of forming a trading company under the Webb-Pomerene Act, but the Justice Department said, "You had better not do that; you will get in trouble." It was kindly advice.

So, he decided he was never going to touch it. It is as simple as that. It isn't that he didn't have a good machine that he would have liked to export; it is just that he isn't going to get into that kind of thing. He hopes to sell internally.

Further, I have long had another very serious concern: when a small business which has no corporation counsel, sends a contract to the Federal Trade Commission, asking if it is legal, the Commission will write back and say it looks fine, but the last paragraph will read, "This letter is advisory only."

Well, of course, any corporation counsel would understand but the small businessman in this particular case didn't know what that meant and he was wiped out in a class action suit. The Federal Trade Commission had approved the contract, but that was no protection in court.

In my opinion, when a duly constituted body of the U.S. Government—and the Federal Trade Commission is charged with the review of contracts under the law—when a duly constituted body hands down an approval, that ought to be a defense in court. Every small business cannot have a corporation counsel right at hand the way a big company has. A big company is equipped to deal with such cases. The small business simply is not.

The only thing that worries me about this proposal is what my colleague from California has touched on. I am worried about the banks. I never thought of banks being involved here. Would it be that they might give different terms to a company in which they were involved? Would this company then have a little advantage against others? Is there any danger? I am not enough of a businessman to know how these things work.

Secretary **Baldrige**. No, ma'am. If I may be rude, Mr. Chairman, and answer this question and leave, because I am due with the Vice President at the White House, speaking before a meeting, and I really have to go.

The smaller company wants a kind of a one-stop service, where he can get letters of credit and be able to hook up with other companies.

Mrs. **Fenwick**. You explained that very well, I think, yes.

Secretary **Baldrige**. The banks under this act would be prohibited from simply doing business with their own export trading companies, and they would have to give it to another business. They would not have to take all of it, but part of it.

Mr. **Bingham**. I wonder if you couldn't respond to just a question or two from Mr. Bonker, who hasn't had an opportunity to ask a question?

Secretary **Baldrige**. I will be glad to.

Mr. **Bonker**. Thank you, Mr. Secretary, for your indulgence, and I appreciate your appearance today.

You made several references to H.R. 1648 which was introduced along with four other bills which applied to the establishment of export trading companies. I don't believe that bill will be the subject of any particular committee hearings.

H.R. 1799'S DISC TAX PROVISION

This committee worked on legislation which was passed out last year and it has been reintroduced as H.R. 1799, so I would hope that you would support the concept of export trading companies. We will work on our will in the House and I think we will come up with something that is fairly comparable to what the Senate has passed.

Secretary **Baldrige**. Excuse me, Congressman. That was in error. I was thinking of the bills similar to the one, or a bill that would be similar to, the one that has just been passed in the Senate, so there would be as little trouble as possible in trying to get it through.

Mr. **Bonker**. My only question relates to the DISC tax provisions. The one additional provision we have in H.R. 1799 is the extension of the DISC tax benefits to trading companies. Our purpose is to provide as much incentive as possible. Perhaps the banks' financial support isn't sufficient to really get trading companies moving in this country, but if we could extend DISC to trading companies, it may be the incentive sufficient to really get a proliferation of trading companies.

Is there any way that the administration could support the addition of DISC to the legislation before us?

Secretary **Baldrige**. Although it is always dangerous to do so, I would like to separate my personal opinion from the administration's position.

The administration's position is that the DISC would be perhaps generating enough controversy so that it would perhaps slow down the success of the bill and, therefore, we would like to see that addressed when general DISC legislation next comes up.

My personal feeling, however, agrees with yours; I think that it would be a good thing to have it at the proper time. I just hate to see it hold up the whole bill.

Mr. **Bonker**. Thank you, Mr. Secretary.

Mr. **Bingham**. Thank you very much for being with us and we appreciate your testimony.

Secretary **Baldrige**. Thank you very much.

Mrs. **Fenwick**. Best wishes to the White House.

Secretary **Baldrige**. Thank you.

Mr. **Bingham**. We will hear now from John M. Boles, president, Boles & Co., Inc.

STATEMENT OF JOHN M. BOLES, PRESIDENT, BOLES & CO., INC.

Mr. **Boles**. Thank you, Mr. Chairman.

I am John M. Boles, president of Boles & Co., Inc., an international trading company.

On February 18 of this year I testified before the Senate Subcommittee on International Finance endorsing the Export Trading Company Act of 1981. Our company is a member of the National Association of Export Companies, Inc., NEXCO, and of the Export Managers Association of California. My testimony, however, represents only the position of Boles & Co., Inc.

As an international trading company, our export activities range from high technology products and systems to packaged foods and other consumer items. We also import products from foreign countries which are distributed in the U.S. market, and we conduct third-country transactions as well. In almost all instances we are a principal in our trading transactions by taking title to the products and assuming the risks of marketing in more than 30 countries.

We purchase from our suppliers on a short-term basis and sell to our customers under a variety of long-term credit arrangements. This has the effect of financing both our supplier's inventories and our customer's receivables.

This banking function is one of the most critical aspects of our business and the pivotal ingredient in the long-term success of any international trading company; and it greatly facilitates American exports, since in most cases smaller manufacturers cannot obtain the necessary financing directly from commercial banks.

SUPPORT OF ETC LEGISLATION

Boles & Co., Inc., supports enactment of the strongest possible legislation which would: (a) Permit U.S. banking institutions to take equity positions in trading companies without regard to percentage ownership, provided that no single banking institution's investment in one or more trading companies exceeds 5 percent of its capital and surplus; (b) limit such investments and participation to bank holding companies and Edge Act corporations; (c) revise the Webb-Pomerene Act of 1918 to clarify antitrust liabilities applicable to all exporters of U.S. products and services, including trade associations, trading companies and individual manufacturers—and we endorse the certification process in that regard; (d) provide tax incentives to U.S. exporters of goods and services, or their suppliers, by expanded DISC treatment or by preferential tax credits linked to improvements in year-to-year export performance; (e) create the proper climate and incentives which would bring our financial institutions into the mainstream of financing inventories and receivables attributable to export sales, thereby reducing the need for public-sector funds, guarantees and subsidies; (f) centralize regulatory authority on bank equity investments in trading companies within the Federal Reserve System and; (g) foster constructive cooperation among the banking institutions, trading companies, regulators and the public sector in general.

I recognize both the legislative and regulatory facts of life, and what I propose—indeed what this country needs—is probably not attainable at this time; however, I cannot overemphasize the importance of strong, purposeful and uncomplicated legislation on this issue.

U.S. UNCOMPETITIVE INTERNATIONALLY

We have a major problem. The United States has become uncompetitive in the world economy. The evidence is straightforward and abundant. We no longer have our historical franchise in many key economic industries, such as steel, automobiles and consumer electronics. Our share of the world market, including the United States, continues to erode. Our once efficient and highly innovative manufacturing base has deteriorated and is being eclipsed by diligent foreign producers who, frankly, are better than we are.

This has been further exacerbated by cascading regulations, antitrust, tax and other disincentives against exporting, doctrinaire foreign policies, and a morass of public- and private-sector special interests.

Like England, we have succumbed to operating in a world that used to be. Most of our business leaders are still reflexively blaming all this on Government.

If Washington would only take the shackles off, they chorus, we will—and I will delete what I was going to say.

As Reg Jones, the former chairman of General Electric, has wisely said, "I wonder."

It is obviously time that we see the situation as it is and recognize that our problems are structural and systemic. Our business community has produced a generation of managers obsessed with short-term results. While we labor to squeeze the last ounce of paper profits from inefficient plants and obsolete products, our foreign competitors are doing exactly the reverse: They are pursuing long-term strategies, modernizing their facilities and developing streams of new products which are responsive to the marketplace.

These commitments have cheerfully been made at the expense of short-term profits and retained earnings. Simultaneously, our managers have been doing the very things our traditional management techniques warned against.

Ironically, the Japanese and the Germans and French and Koreans and almost everybody else are now applying the American managerial methods that made this country dominant. They are doing it hands on, on the factory floor, rigorously inspecting their products for the highest quality, getting all their employees enthusiastically pulling together and sensitively turning their enterprises to the markets.

We have to turn around what the Europeans and the Japanese are openly calling "the American management malaise" if we are going to make this country competitive again in the world marketplace. The President's economic policies, hopefully, will help by reducing restrictions and by stimulating greater savings, investment, and productivity.

Yet even if they are adopted by Congress and actually begin to work, we have got to recognize that these macroeconomic remedies and managerial attitudinal changes are going to take a long time to become effective.

There are usually no quick fixes in this sort of situation; but fortuitously there is in front of us a structural remedy which can take effect very quickly—the trading company.

BENEFITS OF TRADING COMPANIES

I know you are familiar with the basic argument that the development of trading companies in the United States is urgently needed to siphon up the products of many small- and medium-sized manufacturers and sell them in markets around the world. Altogether, there are perhaps 250,000 such manufacturers which either do not export at all or are only marginal exporters. Many of these have the capacity to be competitive abroad if they can obtain the necessary expertise and financing to adapt themselves to world markets; and this is really the only way we can broaden our export base and eliminate our chronic trade deficit.

We know by practical experience in the marketplace that the trading company concept works. We have been able to export California wines to more than 20 countries so far, and we have even successfully taken Sebastiani into France. We have been able to export advanced microcomputers from Silicon Valley in California and from Texas to Europe and Asia.

I would like to be able to tell you that we are actually selling these to the Japanese, but we haven't quite cracked that yet. We have been able to draw up the products of many small processed-food manufacturers and begin marketing them abroad.

Passage of the legislation would help us by focusing attention on the valuable contributions that trading companies could make in our economic renaissance and by permitting banks to get into the field with their tremendous financial resources and global reach. We believe bank involvement will catalyze and help rationalize what is essentially a cottage industry—the thousand or so small export management companies which now serve as export arms or agents for manufacturers. Some of these companies understandably fear bank involvement and rationalization, but this protectionist attitude must give way to the national interest.

We believe considerably larger and more capable trading companies must emerge to effectively tap the country's latent export potential, and we think a number of good things will develop in the process:

One, the banks will become educated to the hand-on realities of international trade, and this will make them feel easier about financing exports of smaller companies.

Two, a large insular sector of our manufacturing industry will also become educated to international trade. They will see the benefits of serving a much larger world market which is growing faster than the domestic market and frequently provides greater profits.

Three, trading companies will give an entrepreneurial shot to our whole economy. A trading company is probably the most entrepreneurial venture there is, since it is on the forward edge of developing new markets under the most competitive circumstances. And I want to stress this: It is the most effective means of feeding back to our basic manufacturers the intelligence and incentives for improving their products and correcting their managerial methods.

PUBLIC INTEREST IN ETC'S

We are out of sync with the world and any institution that can help adjust the U.S. economy to the realities of world competition deserves to be encouraged on that ground alone. I know that this strikes a spark around the country because I have received more than 3,000 letters since I testified before the Senate. Several hundred export management companies applauded the forthright stand I took in support of the Export Trading Company Act, even though their trade associations were then opposing the legislation.

Several hundred small manufacturers wrote asking us if we could help them export their products, and this has already led us into several new areas.

And, most warming of all, we received over 2,000 letters from young people who were turned on by the idea of building a great American trading company, and they want to come to work for us.

One of the students we have talked with is doing a very interesting thing. He is finishing graduate business school, taking an intensive course in Japanese at the Monterey, Calif., language school this summer and then going to Tokyo to work for a Japanese trading company for a couple of years. When he comes back to the United States he wants to join us.

So there is new growth potential coming up in this system and there are a lot of other talents in this country that a trading company can mobilize.

We have recently brought on our board a retired executive of a major oil company who has been a State Department official and a governor of the World Bank. He is providing extraordinarily rich experience in international business and finance and contibuting to the growth of our middle management and younger people.

We plan to draw further on this reservoir of highly experienced people who are nearing retirement or who have recently retired from outstanding companies. These people also will be eager to help build a great American trading company, which gives them an exciting new horizon and extends their productive life.

There is nothing more crucial to our development than people. As we grow, we will need literally thousands of people with the intelligence, creativity and entrepreneurial spirit to become effective in the trading company world; and I would like to think this will have an invigorating effect on the rest of the business community, even perhaps the graduate schools of business.

The trading company is one of the few opportunities I have ever seen where you can do something for yourself, for other people, for your economy and your country, and for the world. It is all up. I am excited every moment I am in this business because I feel all of us are contributing something important, and I want to communicate that excitement to you.

Now, in reviewing the various legislative packages, I would like to offer some closing remarks regarding expectations and controls: If adequately stimulated by this legislation, the U.S. trading company industry could very well become the single largest growth industry in this country over the next decade. By 1991 it is conceivable that our trading companies could account for approximately $110 billion per year in exports. This will require a strong international marketing and sourcing infrastructure, with the initial foundation being provided by U.S. banking institutions.

Whereas it is reasonable to assume that U.S. bank foreign branches would become involved in trading operations, their onsite presence and support services can be critical in facilitating trade transactions and providing credibility to foreign customers.

International trade is fundamentally in the control of large multinational enterprises. If we are to compete effectively, then we must enable our trading companies to attain institutional status. A New England trading company with an obvious affiliation to a New England bank will carry much more clout than a New England trading company without parentage. A legislative or regulatory requirement prohibiting name association is more form than substance and is unresponsive to the problem.

I basically favor participation by only the bank holding companies or Edge Act corporations. I have not been persuaded this is a sound activity for smaller banks which do not have an international infrastructure in place.

I want to specifically urge enactment of H.R. 1799. I believe this particular bill to be the most comprehensive and responsive package under consideration. It is a good beginning.

Thank you.

Mr. **Bingham**. Thank you very much, Mr. Boles.

A COTTAGE INDUSTRY

I think the obvious question that occurs after listening to your testimony is aren't you already going great guns?

Mr. **Boles**. We are going great guns, in one sense, Mr. Chairman, but we are still part of a cottage industry. In order for our company to grow, we have to grow within the context of a real industry. We like the idea of having both partners and competition in this industry. Any corporation of any size in this country has grown up with that kind of an environment.

Several companies do not make an industry. The only way to get this industry organized and properly capitalized is through institutional means, and the only available institutional means right now is the U.S. commercial banking sector. These are not companies that would normally be considered for your standard venture capital institutions. They certainly cannot borrow money to start business because they generally do not have much network and their debt-to-equity ratios are always going to be thin. And the cash that they employ is going to be substantial.

We estimate a trading company is going to require $1 in cash for every $1.50 to $2 in sales. There is just no other obvious constituency to support the growth.

Mr. **Bingham**. Thank you, Mr. Boles.

Is your parent corporation the same as Grumman Aircraft?

Mr. **Boles**. No, Boles & Co. is a California corporation.

Mr. **Bingham**. I meant the question to be directed to Mr. Mead.

Mr. **Mead**. Yes, sir, Mr. Chairman, it is.

Mr. **Bingham**. Just as a matter of curiosity, how large is the solar division of Grumman as part of the company's total business?

Mr. **Mead**. The solar division is a very small part of the company. It is one of our commercial diversification activities. It accounts for perhaps on the order of 100 people in the form of employment.

Mr. **Bingham**. And you feel that exports are important enough to you that you are interested in coming here today to testify in support of this legislation?

Mr. **Mead**. To a company like Grumman—today I am representing the Solar Industries Association—but speaking on behalf of Grumman—and we do a good deal of our business on an international basis and a lot of it is commercial activities, where the establishment of trading company legislation would open up some very interesting avenues to us. A big company like Grumman is a lot of small companies put together.

If you remove the aerospace part of our business, we are a very small conglomerate of commercial activities, from buses to solar collectors. There is a very large market for our activities; it is just an issue of getting to it. So we would find some very interesting opportunities even as a large corporation.

Mr. **Bingham**. Mr. Lagomarsino, do you have any questions?

Mr. LAGOMARSINO. Thank you, Mr. Chairman.

I would like to have all of you comment on just a few questions that I have.

NO BANKING OLIGOPOLY

One that I asked the Secretary a moment ago was: If banks are allowed to participate in forming trading companies, is there a danger that a few banks would end up dominating the field? Is that a fear that you have?

Mr. COHEN. I would think there is just as much of a likelihood that the opposite would occur. That is to say that the competition would probably bring in some of these smaller banks that do not have vast experience at this point in time.

I think there is a great potential, especially in the case of regional banks, where they would have some of the best experience with regard to the smaller manufacturers in their areas and that possibly they would be able best to bring them into international trade through an export trading company.

So, while there is some fear that has been expressed, and I realize that, I think the opposite could very well occur.

Mr. BOLES. I was diverted at the time you asked the question.

Mr. LAGOMARSINO. It is the same one: If banks are allowed to participate in the export trading companies, is there a danger that larger banks would end up dominating the field?

Mr. BOLES. I don't think so. One never knows, and I am hesitant to be overly prophetic. Typically, the major banks are in the major metropolitan areas. The manufacturers tend to be spread out and also tend to deal with smaller banking institutions. I could see a scenario where the major banks would form liaisons with some of the smaller regional banks to tap into the manufacturing bases in their particular area, since they don't have the capability of serving that anyway.

I would look at it as a fairly healthy partnership between the large banks and the smaller regional banks, frankly.

Mr. LAGOMARSINO. I know in your testimony you seemed to prefer that it be the larger banks involved?

Mr. BOLES. I don't really prefer only the larger banks. If I remember the statistics, out of the some 15,000 or so commercial banking institutions in this country, approximately 1,200 to 1,300 have holding companies.

What I am concerned about here—or let me rephrase that: The principal thing that the bank has to offer to the industry is its infrastructure. Those banks that do not have infrastructure located abroad then only have capital to offer, and I am nervous about that. I think that they have to be able to offer that infrastructure. That is why I would tend to limit it to the holding companies, at least initially.

Mr. LAGOMARSINO. Mr. Mead, do you have a comment?

Mr. MEAD. One of the strengths of the banks traditionally has been correspondent relationships overseas. I know a number of our constituents in the solar industry business work through their local banks who have strong correspondent relationships overseas. I think this would play a role to make sure that there is a healthy, competitive environment.

EXTENDED ACTIVITIES OF ETC'S

Mr. **Lagomarsino.** Let me ask all of you: Should export trading companies be allowed to invest overseas? I guess that goes without saying. That is the only way you can get started.

Mr. **Boles.** First, the concept of an export trading company only is a limiting concept. I certainly agree that the major thrust is to develop exports, but in developing exports numerous other things have to be done. You really have to import as well, if you are a general trading company.

The concept of reciprocity is important in international trade. You also have to be able to deal in soft currency countries. A great deal of the market that is emerging is in what we tend to call third-world countries. They have soft currencies and you have to be able to barter products; you have to have an integrated market activity in order to be a dominant factor in the marketplace.

So, my answer is yes, they should be allowed to.

Mr. **Cohen.** I would not differ, in the sense that you will have probably in any legislation the need for setting some kind of requirement with the percentage or portion of activities that will be defined as export; but I don't think it should be totally devoted to export.

Again, there is need for some flexibility and some companies depending upon their particular product areas will need to have barter arrangements and other types of activities.

So, I would think certainly that should be an option that is left open, but certainly it should not be any major activity.

Mr. **Mead.** The answer is clearly, "yes". We have enough examples of foreign competition increasing in this country in the form of trading companies. I think we are behind the power curve as far as getting going and having trading companies. If we are worried about how to do it, I think we have to look at those who have done it successfully, and the Japanese provide us with sufficient models.

Mr. **Lagomarsino.** The obvious question is, Should export trading companies be allowed to engage in importing activities, if that would promote their export capability? I take it that you all say "yes"?

Mr. **Boles.** Yes.

Mr. **Lagomarsino.** Thank you.

Mr. **Bonker.** I want to thank the witnesses for their comments.

Mr. Boles, I wonder if you could contrast for the subcommittee the difference between your organization, which is now characterized as an international trading company, in which you say that you are a principal in paid transactions taking title to the products and assuming the risk of marketing and purchasing from your suppliers on short-term basis, and selling to customers under a variety of long-term credit arrangements, contrast that, if you will, with how this operation would be conducted under the provisions of this legislation?

Mr. **Boles.** The provisions of the legislation are very much in synch with how we are conducting the business now. By purchasing from our customers in the United States—remember, this is a domestic transaction; we are a domestic customer of those manufacturers and we therefore qualify as a domestic customer for borrowing under the revolving lines of credit with their banks. Typically, manufacturers cannot get revolving lines to support foreign receivables, so they sell to us and we buy as a domestic transaction and they go to the bank and borrow 80 percent or whatever the transaction value was to us, and get the money from the bank immediately, and we pay them within 30 days.

We will inventory some of these products and sell them outside the United States. We will offer our customers up to 180 days' credit. That means that they can buy our products and sell them and collect their cash and sit on it for a while and then pay us.

So the growth in the market area that we are dealing with is not restricted to the particular cash limitations of any one customer that we might have over there.

This legislation is very much in support of that, because it would allow banks to come in and invest, let us say, up to $10 million in a trading company, which will give that trading company a $10 million additional equity base. Assuming that current conventional banking wisdom is that trading companies can borrow money at a rate that approximates 3 to 1 on a debt-to-equity basis, they have all of a sudden $40 million in cash available to them, or $30 million under borrowing.

That can support a lot of export activity. So I find the legislation is very supportive.

LETTERS OF CREDIT

Mr. **Bonker**. Well, it has been brought to my attention that there is a continuing problem among people who engage in this activity with certain letters of credit. There is a time factor. It seems to me that in other countries the manufacturers are responsive in extending this credit where U.S. banks really have not been that cooperative. Do you see the letters of credit being replaced by becoming investment in the formation of trading companies, or would it complement it, or what would be the distinction?

Mr. **Boles**. Typically, the reason a company would require a letter of credit before he ships his product outside the United States is because he is suspect of the credit of his customer. A multinational bank or a bank with an international infrastructure could easily verify that. This legislation would be responsive to that issue. It would provide an existing infrastructure that is very experienced in credit verifications, so he could quickly make a determination whether or not he wants to ship on a letter-of-credit basis.

FORMATION OF COMPANIES

Mr. **Bonker**. In your description, it seems to me that you function as a broker of sorts on the domestic market and perhaps on the international market in supplying products to other countries. My perception of a trading company is that, say, in the Northwest where I am most familiar with our commodity lines, if five or six wood products mills wanted to form an export-trading company to promote their products in the Pacific countries, they would come together and form a trading company with bank financing and set up their staff and pull together all of the necessary resources that would make them more competitive.

Now, do you see these two different forms of trading companies being established under the provisions of this bill, one where you could set up a trading company and serve as something of a broker, and a second form where five or six firms that specialize in certain product lines would form a trading company to promote their wares abroad?

Mr. **Boles**. No, and in actual fact there is no difference between what we do and the scenario you just described with the suppliers in the Northwest.

Essentially what they would do, they would come together and capitalize a company, and that company would buy products from each one of them, and then sell them to parties outside of the United States.

We do essentially the same thing, only in our case, to take the case of exporting California wines, the various wineries that we handle did not form their own trading company; because we were in existence, they all came to us. So we buy their products from them and then sell them. They did not have a requirement of putting equity capital into us.

Mr. **Bonker**. How many wineries were involved in that?

Mr. **Boles**. Seven or eight currently.

Mr. **Bonker**. Is there any difficulty in trying to determine what winery will supply what goods, or is that negotiated by you among the various suppliers?

Mr. **Boles**. They generally go on a case-by-case negotiation, but essentially we buy within a most favored nation kind of price; whoever their largest customers are, we get it at the same price and then we resell.

SERVICES PROVIDED

Mr. **Bonker**. What are some of the services that you would provide, for instance, to the Northwest if we were to form a trading company to promote wood and paper and pulp products abroad, in terms of transportation and pricing?

Mr. **Boles**. It goes a little more extensively than that. Typically, we will do the marketing service and we will isolate the markets and identify the methods of distribution. We will then purchase the products and we will spend substantial amounts of dollars in advertising and promotion, and we will arrange the transportation. We now have title to the product and we have to arrange the transportation.

Then we provide the after-market followup, whether it is a computer system going into Germany or a case of wine going into Hong Kong.

Once again, the incentive to the domestic manufacturer is that he does not have to worry about all of that kind of documentation in areas that he generally is very uncomfortable with; that is, the foreign marketplace, he doesn't understand foreign currencies and he doesn't want to take the time to understand them; and particularly in the case of our medium and small manufacturers, we provide the legal assistance. We do all of the compliance and make sure we are in compliance with both U.S. regulations and foreign regulations. If there are special labelings required, we put it into whatever language is required.

Mr. **Bonker** [presiding]. Mr. Erdahl.

Mr. **Erdahl**. I extend my apologies for being at another meeting and being late to this one. I have no questions, but it seems to me what we must do, as a Government, as a business, and as an company, is try everything we can to encourage an expansion of trade around the world. I think that is important to our economy here, and I think it is important to world stability.

I am not wedded to any particular mechanism for doing that, but I think the concept is one that we on this committee, and we in this Congress, should pursue aggressively.

Thank you for being with us today.

Mr. **Bonker**. I have a question for each of you. Each of you has some interest in this area. It seems to me there are two main problems to the formation or expansion of the trading associations and trading companies. One is inhibitions that are inherent now in the antitrust laws; second is the financial capital to go into trading companies to make them more viable.

The attention has been upon banks and that is what the legislation specifically provides for.

OTHER TRADING COMPANY FINANCIERS

But why not go to the oil companies who seem to have considerable liquidity and are looking for profitable ventures for their investments? Is it not possible for oil companies to become more aggressive in this area?

Mr. **Boles**. I think the U.S. commercial banks are one constituency. Natural resources companies are trading companies but they tend to specialize in their own products. They do understand the flow of currencies and so on.

Mr. **Bonker**. Do you see any problem with that? They have all of the resources and they have the financial capital and they could really preempt in this area, or do you feel it is potentially large enough?

Mr. **Boles**. It is potentially large enough that it could absorb a lot of constituents; but I did want to make a point about foreign banks.

Currently, as I understand the regulations, foreign banks can do this right now. We, in fact, have been approached by numerous foreign banks who would like to come in and either take equity positions in us, or come to some arrangements, as yet not defined. That escapes our definition of a truly U.S.-based trading industry, but they are moving aggressively. They will move, and it will be broad based. It will be United Kingdom banks and the Japanese through their trading companies which will come in; also, we will see some of the continental banks.

Mr. **Bonker**. You don't foresee any concerns there?

Mr. **Boles**. I don't. I find it complementary.

Mr. **Cohen**. I would think, again, that the problems today in export are largely in many cases questions of financing. If there is some potential in groups other than banks, I think they could make a major contribution to the overall export effort.

It seems in some sense that in discussing the legislation, not today but in another forum, that there is a tendency to believe in some cases that there is an absolute requirement with the export trading company of bank participation. The way it has been designed, it provides opportunities for nonbanking organizations to set them up, very much along the lines you were describing for the Northwest, where there is a group of companies in similar areas who hesitate to cooperate together for export who would feel comfortable because of the certification procedure, and the certainty that would be provided that they would not be subject to antitrust litigation.

Those small companies holding their resources might well be in that similar situation of a regional or local bank.

There is also the option of a one-time offer that groups could put together to bid on foreign tenders. I am thinking in terms of perhaps an engineering company, a banking company and other groups who would put together a proposal that would not, without the trading company concept, allow them to work together. They might be successful and, again, this could lead to major exports. That is, an oil company might be involved in that process.

Mr. **Bonker**. But it is fairly limited?

Mr. **Cohen**. Yes.

Mr. **Bonker**. Do you have any comments?

Mr. **Mead**. I don't see the oil companies providing anything but capital, of which they have a substantial amount. It has been our experience in the solar business, in which most of the oil companies have gotten involved, that, frankly, they are no more successful overseas than people without the same background, except for the fact that they have a lot of money to pour into it. Oil companies are very good at moving oil around the world, but the types of services and the types of expertise such as Mr. Boles offers through his companies are clearly not evident in the oil companies. They would provide capital but I think the banks would provide certainly many more services and many more functions than the oil companies would be able to perform.

H.R. 2326 VERSUS H.R. 1799

Mr. **Cohen**. Could I go back to one point that I believe was asked of Secretary Baldrige, about the current Webb-Pomerene associations? I would like to clarify the position of the Emergency Committee for American Trade, and that is that any legislation that would be developed in the area of trading companies would not harm the currently existing Webb-Pomerene associations. There should be some way to grandfather and protect their current involvement, and if that were at all in doubt, I wanted to make sure that that was pointed out.

Mr. **Bonker**. Mr. Cohen, you are something of an expert on the provisions of the legislation, and we are considering H.R. 1799 which incorporates provisions that were passed out of this committee last year.

The chairman of the Judiciary Committee has offered language which his committee is taking up, giving the same protection. There seems to be some confusion as to the practical aspects of the Rodino language as a substitute to our language on Webb-Pomerene.

Would you explain to the committee briefly that language and whether or not it is preferable to the language in the Senate draft and the legislaton we have before us?

Mr. **Cohen**. My understanding of the legislation that is being considered by the bill that is being considered there, it is my understanding of H.R. 2326, which is being considered in the House Judiciary Committee, is that there is no specific grandfather language included.

It would be a piece of legislation that would amend the current antitrust statutes, Sherman and Clay, but would not specifically have language therein that would deal with the issue of the grandfather provision.

Mr. **Bonker**. What is the practical or legal effect of that?

Mr. **Cohen**. In terms of this, my understanding of H.R. 2326, it is a clarifying provision to territorial conduct; however, it would not provide any certification procedure which would provide certainty to business groups that if they did become involved in that activity they would not be subject to antitrust litigation.

There was a question that came up with Secretary Baldrige also earlier today with regard to what would happen in the case of some harm having occurred to someone who was not included in the activities of the export trading company.

The way it is presently structured and the way I understand it, is that if activities are outside of the purview of the certification and those do cause harm, that there would be penalties and the concept there would be a concept of ultra vires.

Mr. **Bonker**. There is this question of charges. You are saying, in effect, if the Congress were to go in the Rodino approach that would be open?

Mr. **Cohen**. I think it would alone not adequately meet the needs of the business community for the purposes of exports such as we have been describing, but as I noted in my testimony, the formal statement, we do think that it is a positive step and one in the right direction and one that we would encourage; but we would like to see it taken together with the type of approach that you and your colleagues and other colleagues have advanced.

Mr. **Bonker**. Hopefully, we can reconcile that and not confuse everybody in the process.

I would like to have each of you comment just briefly on the question that I posed to the Secretary concerning the tax provision: First, it does provide an incentive and, second, I think it is only fair because there may be some companies that would find it preferable to go it alone and qualify for DISC tax benefits than to be part of an export trading company.

Mr. Boles, is that DISC tax break sufficient enough to make a difference in the formation of a trading company?

Mr. Boles. Once again, it is a good start. It establishes a common denominator on the export of products and export of services, and I think that this country will become more and more an exporter of services.

I would like to see it go further, as I mentioned in the testimony, on certain tax credits or deferrals which would be associated with exports on a year-to-year improvement basis; that is, establishing a base year, and whatever the improvement would be the next year, there would be certain tax advantages for that kind of progression.

But as far as the DISC treatment, it is a beginning.

Mr. Bonker. And Mr. Cohen, do you have a comment?

COMPLICATIONS WITH DISC

Mr. Cohen. With regard to the DISC provision, in the best of all possible worlds we certainly like to see a DISC provision included. We feel, however, at this point that there is some concern whether that would be a possibility for widespread support within the business community. There is a specific tax proposal that is being debated and we would feel that if in any way that would have an effect on the overall consideration, we would not want to see that happen. Certainly, it is something that should be entertained.

Also, there is considerable criticism of the DISC by some of our European trading partners and it is very controversial. Certainly, we would like to see it continued and I don't want to mislead you on those lines.

Mr. Bonker. Do other countries that have trading companies, do they enjoy similar tax breaks?

Mr. Cohen. I would assume that they do. I do not know the specific benefits that would be available in the different countries.

Mr. Bonker. Mr. Mead, do you have a comment?

Mr. Mead. I think, clearly, the DISC is something that should be very strongly supported. I would have to agree with Mr. Cohen and the Secretary, that if it is going to hold up the whole show, that it would be better to leave it out and entertain it later on.

I think the overall shell of the trading legislation is much more important to get off the ground than to hold it up over issues that are very important but nonetheless, less important than the entire structure.

Mr. Bonker. I assume all of you enthusiastically support H.R. 1799?

Let the record indicate the nods of the witnesses.

I want to thank each of you for being here today. Your testimony is very important and for the House side this is more or less a kick-off on our consideration of export trading company legislation.

We hope we can come together and celebrate its passage sometime this year.

The subcommittee will stand adjourned.

[Whereupon, at 3:35 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

THE EXPORT TRADING COMPANY ACT OF 1982

THURSDAY, JUNE 11, 1981

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met at 10:20 a.m. in room 2200, Rayburn House Office Building, Hon. Don Bonker presiding.

Mr. Bonker. The Subcommittee on International Economic Policy and Trade will come to order.

The chairman of the subcommittee, Jonathan Bingham, is currently on the floor and will be back shortly to resume his position as chairman, but we will commence with today's hearings.

We are fortunate to have three witnesses who will be testifying on H.R. 1799 and other similar proposals that are currently pending before various House committees concerning the export trading companies.

This is an issue now of some prominence as the Senate has already passed a similar bill in that body. This subcommittee held a series of hearings and passed out favorable legislation in the last session of Congress, and we are in the process now of conducting hearings, of which this is the second, to further our understanding of the potential and of the possible problems that will come with the enactment of this legislation.

The bill is also pending before the House Banking Committee and the House Judiciary Committee; we expect action by those committees and hopefully by this one by the August recess so the full House can take up the export trading company legislation some time this year.

The witnesses today are Jay Angoff, staff attorney representing the Public Citizens' Congress Watch; Mr. Phillip Freeman, senior vice president of the International Division, Huntington National Bank of Columbus, Ohio and I understand he is a constituent of our colleague, Mr. Shamansky; and Mr. William Poole, president of the Georgia International Trade Association.

I think the best order of business is for each of you to give your statements and then the subcommittee will open for questions.

Mr. Freeman, since you appear first on the list and are centrally located on the panel, I invite you to give your opening statement.

STATEMENT OF M. PHILLIP FREEMAN, SENIOR VICE PRESIDENT, INTERNATIONAL DIVISION, HUNTINGTON NATIONAL BANK

Mr. **Freeman**. Mr. Chairman, members of the subcommittee, my name is Phillip Freeman.

I am senior vice president and manager of the International Division of the Huntington National Bank, Columbus, Ohio.

The Huntington is generally referred to as a regional bank ranking among the second 50 largest banks in the United States.

We provide a full range of international banking services to our market from our Columbus head office and 1 foreign branch with the assistance of 113 branches in 55 communities throughout Ohio and more than 200 foreign correspondent banks throughout the world.

I am pleased to have this opportunity to express our views on the establishment of export trading companies.

EXPORTING: STILL A FOREIGN IDEA

Especially throughout the past decade, the Huntington's International Division has contributed to the facilitation and growth of foreign trade in the State of Ohio.

This and the building of an extensive network of foreign correspondent banks have been, and continue to be, our principal and almost exclusive international objectives.

While our customer base includes large companies, we have attempted and, we believe, succeeded in assisting and serving many small firms in their efforts to enter and compete in the international marketplace.

As an example, in the financing of exports, we have made extensive use of a program in which we purchase export receivables of small companies without recourse using an insurance policy covering foreign commercial and political risks issued to our bank by the Foreign Credit Insurance Association.

Even this attractive program has failed to induce countless companies to take on the investigation, marketing and distribution responsibilities of exporting.

In developing our market, we have found that we are also very much in the business of selling exporting. It is not an easy job.

In most countries exporting is necessary for a firm's survival while with our tremendous domestic market in this country it is a strange and truly foreign phenomenon.

As compared to the task of interstate commerce, international trade is a business in itself.

Methods of investigating potential, communicating with prospects, evaluating country and commercial risks, protecting against such risks, packaging and transporting product, collecting payments, exchanging currencies, hedging currency risk, settling disputes, assuring compliance with U.S. export and foreign import regulation must all be learned.

For each new country in which a buyer is found, a new set of methods is needed. Investment of time and energy is considerable and, if spent, all too often begins to pay off only at the time the domestic order backlog finally begins to climb.

Export trading companies are an answer to this dilemma providing investment, expertise and continuity to exporting.

BANKER'S ASSOCIATION FOR FOREIGN TRADE

The Huntington is a member of the Bankers Association for Foreign Trade, known as BAFT, founded in 1921 to expand member banks' knowledge of international trade and to develop sound banking services and procedures in support of trade.

Today BAFT's voting membership of 151 U.S. banks includes virtually all of those having significant international operations.

BAFT has expressed its strong support for the need for export trading companies and has in statements before this and other Committees of Congress given its position on aspects of various bills.

The Huntington has supported and continues to support the need for export trading companies legislation and we agree with the positions taken by BAFT. These include the statements of Donald G. McCouch, currently President of BAFT before this committee on May 22, 1980, and of Ben Bailey, Director, and J. Hallam Dawson, Past President, before the Committee on Banking, Housing and Urban Affairs of the Senate on July 25, 1980 and February 18, 1981 respectively and letters dated June 4, 1981 to Representatives McClory and Rodino from Gary M. Welsh, counsel to BAFT.

A copy of this recent letter has been submitted for the record.[1]

BANKS: DIRECT MARKET INVOLVEMENT AND RISK SHARING

As to the pending bills referred to this subcommittee, the Huntington urges you and your colleagues to approve H.R. 1648. We further ask that you view H.R. 2326 not as a replacement or substitute to title II of H.R. 1648, but rather as a desirable and important complement addressing much broader issues.

Banking involvement in export trading companies, including the ability to have controlling interest, as written in H.R. 1648, is necessary to their ultimate success.

We feel that with our experience and knowledge of our clients' potential, we can create exports through direct marketing involvement and risk sharing.

There are sufficient safeguards in the bill in conjunction with existing regulation to assure that export trading companies will not erode the soundness of our country's banking system.

It would not be our bank's intent to compete with our customers in exporting, nor do we have a desire to assume substantial commercial risks.

We feel, however, that the ability to own at least a majority interest in export trading companies would provide the necessary flexibility to structure export trading companies, which either improve our delivery of services and financing to exporters or allow us to contribute financial and managerial support to commercial ventures with the capability to control the degree of risk assumed.

In regard to the antitrust provisions of pending bills, the existance of uncertain interpretations of law or possible litigation in this area would certainly reduce our interest in investing in export trading companies or extending credit to non-related export trading companies.

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[1] See appendix 1, page 143.

We believe that title I of H.R. 1648 would best serve our possible interests and that in general the procedure established therein for exemption certificates is an important feature for the ultimate success of export trading companies.

At the very heart of the problem of lost opportunities abroad is the evolution throughout the remainder of the world of practices encouraging the elimination of competition.

As a final point, our main concern goes beyond the legislation being discussed here today. We feel that the enactment of legislation resulting in the strongest and most flexible export trading companies possible is a necessary first step in what will be a continuing challenge.

The benefits of and need for exporting is now well recognized in this country.

The world, however, will certainly not stand still but, will become even more competitive. Our traditional competitors, as well as the developing nations of the world, will compete more fiercely.

Only 10 percent of the 250,000 manufacturing firms in the U.S. export. Fewer than 1 percent of these firms account for 80 percent of our exports.

An estimated 20,000 U.S. manufacturers and agricultural producers offer goods and services which could be highly competitive abroad.

As mentioned earlier, we have seen and talked exporting with many of these in our own State. It will not be a simple task to bring out this potential.

Export trading companies will provide opportunities for many. More importantly, it will begin to instill a psychology of export-mindedness. Government will have shown its commitment to the need to sell internationally.

More and more firms will see their neighbors benefiting from foreign sales.

Companies will then be motivated to give serious study to their own possibilities in foreign markets.

They will not sign up with the first export trading companies to knock on their door. Many will decide to export directly, believing that their marketing channnel is best served by closer contact with foreign buyers.

At the same time, hopefully, additional legislation and measures relative to exporting will be offered to reduce confusing regulations, to provide economic incentives, to finance buyers, to educate and train companies in the complexities of exporting, and to improve the competitiveness of our products and services at home as well as abroad.

We see export trading companies as the first step in the marketing program of the U.S. Government to sell exporting.

I hope my testimony this morning has proved useful to the committee and I would be pleased to answer any questions you might have.

Mr. Bonker. Thank you, Mr. Freeman.

Mr. Poole.

STATEMENT OF WILLIAM M. POOLE, PRESIDENT AND MEMBER OF THE BOARD OF DIRECTORS, GEORGIA INTERNATIONAL TRADE ADMINISTRATION [GITA]

Mr. POOLE. Mr. Chairman, members of the subcommittee, I am William M. Poole, a partner in the firm of Kutak Rock & Huie, heading the international business transaction section of our Atlanta office.

I appear before you today in my capacity as immediate past president of the Georgia International Trade Association, a post which I have held for the last 2 years.

I currently serve as a member of the Board of Directors of GITA.

GITA supports enactment of H.R. 1799, the Export Trading Company Act of 1981, but suggests the following modifications:

No. 1, we recommend establishing a specific timeframe for the drafting of regulations to implement title I; and

No. 2, include section 207 of S. 734, the Senate version of this bill, in H.R. 1799.

I would like now to briefly summarize the statement submitted by the GITA to this subcommittee.

GITA

For your general background information, the GITA is a 28-year old association of over 200 individual and corporate members representing all segments of international commerce. Our members include manufacturers, export management companies, export sales distributors, importers, steamship lines, freight forwarders, air, motor, and rail carriers and related international service industries such as accountants, bankers, lawyers, insurance agents, and customshouse brokers.

Our membership also includes members of chambers of commerce and local, State and Federal governmental officials.

A copy of our membership directory has been provided along with our written statement.[1]

FEDERAL GOVERNMENT MUST ACT

Since Senator Stevenson first introduced export trading company legislation in the 96th Congress, the GITA and many of its individual members have been looking forward to the enactment of this bill. This anticipation is due to a general belief of the international trading community of Georgia that action must be taken by the Federal Government to remove the difficulties and disincentives facing U.S. exporters in attempting to sell U.S. products in world marketplaces.

Permitting bank equity in export trading companies and a strengthened and expanded Webb-Pomerene antitrust exemption should enable U.S. exporters to expand their international markets and compete aggressively with foreign companies on a more equal footing.

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[1] A copy of the 1979–1980 Georgia International Trade Directory has been retained in subcommittee files.

As mentioned, the association has several suggestions for improving H.R. 1799 and other pending export trading company legislation currently under consideration by this Congress.

Let me begin by focusing on two aspects of H.R. 1799 which the GITA believes should be revised by the subcommittee.

REGULATION DRAFTING PROCESS

Under title I of the bill, the title which would permit banks to take an equity position in export trading companies, there is the reasonable requirement that Federal banking agencies draft regulations to govern any major bank equity participation in these new ventures.

The members of the GITA are concerned, however, because neither H.R. 1799 nor the Senate bill, S. 734, specifically instructs these agencies to draft their regulations in a timely fashion.

In testimony before the Senate Banking Committee, both last year and this year, representatives of the bank regulatory agencies have expressed reservations about bank participation.

We are concerned that these reservations may carry over into the regulation drafting process and cause unnecessary delays in implementing the new law.

Therefore, the GITA would like to see a specific time frame imposed upon those regulatory agencies, perhaps a time frame similar to that included in title II regarding the drafting of Commerce Department regulations for export trade associations' certification.

PROVISIONS FOR EXISTING WEBB-POMERENE ASSOCIATIONS

The GITA would also like to see section 207 of S. 734 included in H.R. 1799. It is this section which permits existing Webb-Pomerene associations to continue their operations under prior law rather than to have their business arrangements interrupted by an unnecessary certification process which could last for perhaps as long as six months.

Four important Georgia products, peanuts, wood products, poultry and kaolin clay, are exported currently through Webb-Pomerene associations.

It would be unwise and unfair to disrupt exports of these important segments of Georgia's economy perhaps endangering long-term overseas commitments on which these industries depend.

Inclusion of section 207 from S. 734 in H.R. 1799 will protect those associations, their exports and their members.

MODIFICATION OF H.R. 2326

I understand that there is also pending a bill introduced by Chairman Rodino and Representative McClory of the Judiciary Committee, H.R. 2326, which involves the seemingly simple change in the Sherman and Clayton Antitrust Acts.

However, the GITA objects to the enactment of this proposal as a substitute for H.R. 1799 for two reasons:

First, H.R. 2326 will not clarify sufficiently the Webb-Pomerene law as it would eliminate a crucial term, "foreseeable."

This term is utilized along with "direct and substantial" to describe a potential impact on U.S. domestic trade. In fact, this omission will make it more difficult for Webb-Pomerene organizations to make business decisions since the foreseeable concept can protect an association from unexpected market adjustments.

Second, the language in section 2 of H.R. 2326 could be misinterpreted to mean that a U.S. producer could not refuse to sell a product to a broker who in turn might compete with that producer with his own product in a foreign market.

I doubt that either the chairman or the ranking member of the Judiciary Committee intended that their legislation have this effect.

RETENTION OF DISC PROVISION

There is, however, one aspect of H.R. 1799 which is far superior to other export trading company bills. That aspect is title III which provides for domestic international sales corporations and Subchapter S advantages to export trading companies. The GITA strongly favors retention of these provisions if possible as we are aware of the Senate's failure to include title III in S. 734.

For this subcommittee's general information, I wish to submit for the record the Georgia Department of Industry and Trade's statement on export trade in general and in support of the export trading company legislation in particular.[1]

Included with these comments are materials which detail export sales from the State of Georgia from 1967 to 1981.[2]

For your information, on May 21, 1981, which was designated as World Trade Day by the United States Department of Commerce, the GITA sponsored an export trading company workshop in Atlanta.

Participating in this workshop were representatives of over thirty companies. A list of the workshop attendees was also provided to the subcommittee.

These workshop participants were enthusiastic and eager in their questions and comments on this bill and they look forward to expeditious congressional action on this matter.

LEGISLATION NEEDED TO AID EXPORTERS

In closing, I wish to respond to critics of this legislation who claim that it is redundant and therefore unnecessary.

Throughout my professional career, I have represented numerous clients in international trade transactions, including companies and citizens of many foreign countries as well as U.S. companies and citizens.

In this practice I have seen firsthand the impact which rapid communications have made on this business. Anyone who wishes to compete aggressively in international trade must be able and willing to perceive opportunities as they arise, to make split-second decisions and deal flexibly and courageously once decisions are made.

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[1] See appendix 2, page 146.
[2] See appendix 3, page 147.

When an international trader locates a purchaser for his reasonably priced, well-made goods and services, he cannot delay a sale while attempting to arrange financing.

He must move immediately and with confidence that the money is there.

The GITA believes that bank equity in an export trading company can help to provide that assurance.

When making decisions about what prices to offer overseas, an exporter must have the flexibility to determine prices which are competitive with foreign producers but not so competitive that American companies must compete against one another before they can begin to compete with their international counterparts.

The revisions in title II will help to alleviate this concern.

Most importantly, the small manufacturers of America who now are beginning to awaken to the significant opportunities for their products available in markets outside the United States need a vehicle to facilitate their penetration of these foreign markets.

The export trading company would allow a group of these manufacturers to join with others to package a total product line. They then can utilize the expert services of qualified international sales and marketing personnel, share travel and exhibition expenses and profit from the economies of scale in marketing their products in all regions of the world.

In short, the exporters of America need this bill.

The GITA and I personally commend your efforts to remove or at least relieve some of the disincentives facing U.S. exporters.

We do not see this bill as a panacea which will solve all U.S. export difficulties. Instead, we see this legislation as a symbol of this Nation's commitment to help us become better exporters.

We are not asking for Federal money nor do we expect the U.S. Government to run these companies for us.

We are asking simply for assurances that such capital will be available and that once we have purchased goods and services inside the United States at competitive prices, we will be able to market those goods and services abroad in the most efficient and profitable manner possible.

Thank you very much for the invitation to appear here today and for your kind attention.

[Mr. Poole's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM M. POOLE, PRESIDENT AND MEMBER OF THE BOARD OF DIRECTORS, GEORGIA INTERNATIONAL TRADE ADMINISTRATION

Mr. Chairman and members of the subcommittee, I am William M. Poole, a partner in the firm of Kutak Rock & Huie, heading the international business transaction section of our Atlanta office. I appear before you today in my capacity as immediate past president of the Georgia International Trade Association (GITA), a post which I have held for the last 2 years. I currently serve as a member of the board of directors of GITA.

GITA supports enactment of H.R. 1799, the Export Trading Company Act of 1981, but suggests the following modifications: 1. Establish a specific timeframe for the drafting of regulations to implement title I; and 2. Include section 207 of S. 734, the Senate version of this bill, in H.R. 1799.

The Georgia International Trade Association is a 28-year-old association of over 200 individual and corporate members representing all segments of international commerce. Our members include manufacturers, export management companies, export sales distributors, importers, steamship lines, freight forwarders, air, motor, and rail carriers and related international service industries, such as accountants, bankers, lawyers, insurance agents, customs house brokers, and also including chambers of commerce and local, State and Federal governmental officials. A copy of the GITA Membership Directory has been provided along with this presentation.

I am pleased to appear here today to express GITA's strong support for passage of H.R. 1799, the Export Trading Company Act of 1981. Since Senator Stevenson first introduced export trading company legislation in the 96th Congress, GITA and many of its individual members have been looking forward to the enactment of this bill.

This anticipation is due to a general belief of the international trading community of Georgia that action must be taken by the Federal Government to remove the difficulties and disincentives facing a U.S. exporter in attempting to sell U.S. products in the world marketplace.

Permitting bank equity in export trading companies and a strengthened and expanded Webb-Pomerene antitrust exemption should enable U.S. exporters to expand significantly their international markets and to compete aggressively with foreign companies on a more equal footing.

The association has several suggestions, however, for improving H.R. 1799 and other pending export trading company legislation currently under consideration by this Congress. Let me begin by focusing on two aspects of H.R. 1799 which GITA believes should be revised by the subcommittee.

Under title I of the bill, the title which would permit banks to take an equity position in export trading companies, there is the reasonable requirement that Federal banking agencies draft regulations to govern any major bank equity participation in these new ventures.

The members of GITA are concerned because neither H.R. 1799, nor the Senate bill, S. 734, specifically instructs these agencies to draft their regulations in a timely fashion. In testimony before the Senate Banking Committee, both last year and this year, representatives of the bank regulatory agencies have expressed reservations about bank participation.

We are concerned that these reservations may carry over into the regulation drafting process, and cause unnecessary delays in implementing the new law. Therefore, GITA would like to see a specific timeframe imposed upon these regulatory agencies: Perhaps a timeframe similar to that included in title II regarding the drafting of Commerce Department regulations for export trade association certification.

Anything that can be done by this subcommittee or by the full Congress to minimize the time it will take to organize an export trading company would be to America's advantage.

GITA would also like to see section 207 of S. 734 included in H.R. 1799. It is this section which permits existing Webb-Pomerene associations to continue their operations under prior law, rather than to have their business arrangements interrupted by an unnecessary recertification process which could last for perhaps as long as 6 months.

Four important Georgia products—peanuts, wood products, poultry, and kaolin clay—are exported through Webb-Pomerene associations. It would be unwise and unfair to disrupt exports from these important sectors of Georgia's economy, perhaps endangering long-term overseas commitments on which these industries depend.

Inclusion of section 207 in the House bill will protect those associations, their exports, and their members.

I understand that there is pending also a bill introduced by Chairman Rodino and Representative McClory of the Judiciary Committee, H.R. 2326, which involves a seemingly simple change in the Sherman and Clayton Antitrust Acts. However, GITA objects to this proposal for two reasons.

First: H.R. 2326 will not clarify sufficiently the Webb-Pomerene law as it would eliminate a crucial term, "foreseeable." This omission, in fact, will make it more difficult for a Webb-Pomerene organization to make business decisions, since "foreseeable" can protect an association from unexpected market adjustments.

Second: Language in section 2 of H.R. 2326 could be misinterpreted to mean that a U.S. producer could not refuse to sell a product to a broker who, in turn, might compete with that producer with his own product in a foreign market. I doubt that either the chairman or the ranking member of the Judiciary Committee intended that their legislation have this effect.

There is, however, one aspect of H.R. 1799 which is superior to other export trading company bills. That aspect is title III, which provides DISC and subchapter S advantages to export trading companies. GITA favors House retention of these provisions if possible, as we are aware of the Senate's failure to include title III in S. 734.

For this subcommittee's general information I wish to submit for the hearing record the Georgia Department of Industry and Trade statement on export trade in general and on export trading companies in particular. Included with these comments are materials which detail export sales for the State of Georgia from 1967 to 1981.

Also submitted for your consideration are: An article appearing in the Atlanta Constitution on Georgia's exports, copies of the U.S. Department of Commerce series on Georgia exports, and the Georgia International Trade Directory, prepared by the Georgia Department of Industry and Trade, reflecting the variety of Georgia products which are available for export.

On May 21, 1981, designated as World Trade Day by the U.S. Department of Commerce, GITA sponsored an export trading company workshop. Participating in this workshop were representatives of 30 companies. A list of the workshop attendees is attached for your information. These workshop participants were enthusiastic and eager in their questions and comments on this bill and they look forward to expeditious congressional action on this matter.

I have also included a list of Georgia companies and associations which have specifically authorized me to indicate their support for this legislation. I believe that these attachments demonstrate Georgia's involvement and enthusiasm for international trade.

Let me cite just one company which would benefit greatly from the export trading company concept: Wilkins Industries, Inc., a Georgia company which has manufactured blue jeans since 1909, and which now sells them actively and aggressively overseas. Bernard van der Lande, export sales manager for Wilkins Industries, has authorized me to share his comments regarding this legislation with the subcommittee.

Wilkins Industries believes that the primary advantage of the export trading company concept will be the new ability to group companies within an industry to profit from economies of scale. In this way, six or seven companies may join together to package a complete line of related products or services for the overseas market, to share travel and ancillary expenses, such as costs for appearances at textile shows in Europe and Latin America and at international trade fairs around the world. The company considers this opportunity to be of substantial value in facilitating their penetration of overseas markets.

Just last week, van der Lande was selling jeans in Chile. During a conversation 2 days ago, he indicated that while he had had excellent results selling his products, he could have been even more successful had he carried a full line of textile apparel, including lingerie and children's clothing. If the market in a particular country or region is already established for a single U.S. textile product, van der Lande believes that it is a simple matter to sell a total package line of related textile products. Unfortunately, this total line is unavailable to him at this time.

Van der Lande indicated that even if the overseas market is poor, and even though it may be very expensive and difficult to justify traveling and selling costs, it is still necessary to continue making appearances at trade shows and at buying offices. In areas where the market must be developed, it is preferable to do so through the joint efforts of a number of related companies and to share expenses which are otherwise difficult to justify.

The comments of Bernard van der Lande are typical of Georgia's international trading community. Many companies which are not big enough to justify expensive international sales budgets and personnel requirements are eager to enter the international market, and see export trading companies as the appropriate means for doing so.

In closing, I wish to respond to critics of this legislation who claim that it is redundant, and therefore unnecessary.

Throughout my professional career, I have represented numerous clients in international trade transactions, including companies and citizens of many foreign countries, as well as U.S. companies and citizens. In this practice, I have seen firsthand the impact which high technology and rapid communication have had on this business. There is simply no time to dither.

Anyone who wishes to compete aggressively in international trade must be able and willing to perceive opportunities as they arise, to make split second decisions, and to deal flexibly and courageously once decisions are made. When an international trader locates a source of well-made, reasonably priced goods or services, he cannot delay a purchase while determining whether sufficient funds are available. He must move immediately and with confidence that the money is there. GITA believes that bank equity in an export trading company can help to provide that assurance.

And when making decisions about what prices to offer overseas, an exporter must have the flexibility to determine prices which are competitive with foreign producers, but not so competitive that American companies must compete against one another before they can begin to compete with their international counterparts. The revisions in title II will help to alleviate this concern.

In short, we need this bill.

GITA and I personally commend your efforts to remove or at least to relieve some of the disincentives facing U.S. exporters and we encourage this subcommittee to aggressively support the expansion of U.S. companies into world markets.

GITA's members do not see this bill as a panacea which will solve all U.S. export difficulties. Instead, we see this legislation as a symbol of this Nation's commitment to help us become better exporters.

We are not asking for Federal money, nor do we expect the U.S. Government to run these companies for us. We are asking simply for assurances that sufficient capital will be available, and that once we have purchased goods and services inside the United States at competitive prices, we will be able to market those goods and services abroad in the most efficient manner possible.

Thank you very much for the invitation to appear here today and for your kind attention.

[ATTACHMENT]

GEORGIA INTERNATIONAL TRADE ASSOCIATION EXPORT TRADING COMPANY WORKSHOP, LIST OF ATTENDEES

1. Ernst & Whinney
2. Kelley & Kelley Ltd.—London
3. Lloyds Bank International Ltd.
4. Burlington Northern
5. Small Business Development Center, University of Georgia
6. U.S. Small Business Administration
7. First National Bank of Atlanta
8. Haniel-Phoenix Transport Inc.
9. William H. McGee & Co., Inc.
10. Atlanta Saw Company
11. John Oram Company Inc.
12. Georgia State University
13. Zep Manufacturing Co.
14. United States Lines
15. MOSAFCO Inc.
16. Tarica & Co.
17. Interam Co., Inc.
18. Georgia Pacific
19. Real Rainbow Crystal Co.
20. South African Marine
21. USA Export Co. Inc.
22. Delta Air Lines Inc.
23. Georgia Ports Authority
24. Georgia Department of Agriculture
25. Georgia Department of Industry and Trade
26. The Citizens and Southern National Bank
27. Foreign Credit Insurance Association
28. Fenwick Co.
29. International Council of Georgia
30. Atlanta Chamber of Commerce

[ATTACHMENT]

GEORGIA COMPANIES/ASSOCIATIONS IN SUPPORT OF EXPORT TRADING COMPANY LEGISLATION

1. Wood Fiber Marketing Corp., Webb-Pomerene Association with 70 members
2. Real Rainbow Crystal Co.
3. South African Marine
4. John Oram Company, Inc.

5. Interam Co., Inc.
6. Small Business Development Center, College of Business Administration, University of Georgia, Athens, GA
7. Atlanta Saw Co.
8. Tarica & Co.

Mr. BONKER. Thank you, Mr. Poole.

I think that since the first two witnesses have appeared in support of legislation to create export trading companies and the third witness is listed on the other side, we will proceed with a round of questioning of the two witnesses who have testified and then we will proceed with Mr. Angoff, if this is all right with you.

Mr. Poole, you made two specific suggestions or recommendations in your testimony that I thought were useful.

The first is concerning Title 8 and the banks which would be under regulations that would be developed by regulatory agencies. Your suggestion is that we establish a time frame so that we do not get into a problem of indefinite promulgation of those regulations.

I think that is a useful suggestion and the committee will take it up when we mark up this legislation.

SUPPORT FOR TRADE ASSOCIATIONS

With respect to your second suggestion that we incorporate into H.R. 1799 the section 207 of the Senate draft, our legislation already incorporates that provision in section 205 of this house bill so that we extend the benefits and procedural aspects of the bill to trade associations as well as trading companies.

The language differs, but only in style, not in substance, between the two drafts.

You may want to give that a closer examination.

Mr. POOLE. If I could, Mr. Chairman, I would like to review that and possibly respond to the subcommittee.

It was our interpretation of that language that it was not as clear as to whether or not the existing associations would be able to continue. That was our concern.

I would like to compare the two more exactly, if possible.

[The following information was subsequently provided:]

Section 207 would permit existing Webb-Pomerene associations to continue their operations—without special certification—under what would be prior law if either S. 734 or H.R. 1799 were enacted by this Congress. Section 205 in your bill and section 207 in S. 734 are identical to one another; however, both would require that an existing Webb-Pomerene association would have to apply for certification to continue operations under the new program. Section 207 of S. 734 was included by the Senate Banking Committee at the request of several existing Webb-Pomerene associations which were concerned that even the most cursory certification process could disrupt trade. Inclusion of section 207 in your bill would make it as attractive to existing Webb-Pomerene associations as S. 734.

Mr. BONKER. Good.

Both the Senate and the House drafts address this problem. We want to see trade associations included into the same category, the same rights as trading companies.

Mr. POOLE. It is not only the question of the inclusion, but it is a question of requiring a subsequent certification which could possibly affect their operations while pending certification that we were concerned about.

Mr. **Bonker**. Now that you have raised this question of certification, both of you commented on the Rodino bill, H.R. 2326.

I think Mr. Freeman feels that the Rodino bill will, in effect, complement the two drafts that are before this committee; but in your statement, Mr. Poole, you implied that H.R. 2326 will not clarify sufficiently the Webb-Pomerene laws that would eliminate the crucial term "foreseeable."

Our attitude at this point is that both the Rodino bill and the provisions in this draft which pertain to the Webb-Pomerene Act are compatible.

In other words, we can go ahead with amending the Sherman Act and the Clayton Act and still establish a certification procedure which I think would represent the best approach to this whole issue of potential litigation that companies face once they have formed trade associations or trade companies.

Do both of you agree that they would be somewhat compatible?

Mr. **Poole**. If I can respond first, Mr. Chairman, we definitely agree with that. Our concern was only a very specific focusing on the absence of the foreseeability concept which we think is important. I do believe the two are compatible and that the final result should be a combination, including the foreseeability concept.

Mr. **Bonker**. Mr. Freeman?

Mr. **Freeman**. That is the approach we would like to see taken.

Mr. **Bonker**. Mr. Freeman, one question for you:

H.R. 1648 VERSUS H.R. 1799

You have announced support of H.R. 1648, and Mr. Poole has supported H.R. 1799. They are basically the same bill.

The LaFalce bill is essentially the Senate bill that was introduced on this side. Our bill is a result of the efforts that we achieved last year in developing trading company legislation.

Mr. Freeman, Mr. Poole outlined the distinctions and why he has come to support H.R. 1799 for the DISC tax provision as well as others.

Is there any reason why you have reached your support of H.R. 1648 or does it really matter? Have you had a chance to look at both bills and compare them?

Mr. **Freeman**. I realize the bills are quite similar. I think our objection really was stemming from the position that the Bankers Association for Foreign Trade has taken, which results from certain specific points with regard to the antitrust procedures. I frankly am not familiar with those details.

Mr. **Bonker**. I think as we approach the antitrust provisions, they are fairly similar in both drafts. You may want to take a second look at that.

If you do have serious objection to H.R. 1799 or substantial reason why you support the other legislation over H.R. 1799, the subcommittee would appreciate having the benefit of your thoughts on this.

Mr. **Freeman**. I will certainly do that.

Mr. **Bonker**. Thank you.

Mr. Shamansky.

Mr. **Shamansky**. Thank you, Mr. Chairman.

I guess I can be forgiven for being somewhat parochial since Mr. Freeman——

Mr. **Bonker**. Mr. Shamansky, don't set new precedents here. [Laughter.]

SMALL COMPANIES FACE DIFFICULTIES EXPORTING

Mr. **Shamansky**. Phil, recently at home I was talking to Dave Williams of W. W. Williams Co., who explained one of their companies is in South Carolina and makes generator sets. I said, do you export them?

He said no.

I said, why not?

He said, it is just too much trouble.

Given your work in the International Division, have you had similar experiences in that respect with people that you would think should ordinarily be interested in exporting?

Mr. **Freeman**. Very definitely.

As I pointed out in my remarks, it is really a completely new experience for a domestic businessman to venture into the world of international trade from the very point of beginning to research the potential up until finally collecting his payment.

Things are done in a different fashion. There are a number of considerations that one just is not confronted with in a domestic sale.

I think because of the very large potential we have in our domestic market, the smaller companies have just not been willing to invest the time and the effort into "learning the ropes," so to speak, of international trade, although I feel strongly that in many cases they are foregoing substantial opportunity.

Mr. **Shamansky**. Does the bank without this legislation have a sufficient economic incentive to push strenuously to interest the smaller companies with good products to get into exporting?

Mr. **Freeman**. I have spent a considerable amount of my time, particularly over the last 5 years, in doing just that thing. Of course, we are selling the international services of our bank and are interested in the income opportunities that this presents us and the deposit relationships it would generate for us; but in doing so we find quite often that, as I say, we are in the business of selling exports.

So we have been actively involved in stimulating small firms to export but there is just a limit to how much of our time and resources we can devote to this activity without something more of a financial reward, which I think an export trading company would provide.

Mr. **Shamansky**. Mr. Chairman, I have to point out in my financial statement which is filed with the clerk, it states that I am a stockholder of Huntington Bank shares. Therefore, I have a—shall we say—personal interest in encouraging Mr. Freeman to go in this area.

Mr. **Bonker**. Mr. Shamansky may have a conflict of interest.

POSSIBLE CONFLICTS OF INTEREST FOR BANKS

Mr. **Shamansky**. I would like to think not. I think of it as a complement. The reason I say that, to get this out in front is to inquire if, with the additional protections allowed or with the greater leeway allowed by this legislation, would it warrant additional efforts on the bank's part to encourage this export effort by the companies in your market area?

Could you make more money on it, in other words?

That is what I am getting at.

Mr. **Freeman**. At this point in time we have not formulated plans to form an export trading company, if and when the legislation would pass, nor are we certain just exactly how we would like to see such an organization developed such as a joint venture with other banks, or a joint venture with certain companies; but given our experience in our marketplace, our knowledge of our customers and their products, and what we think is their potential if we are allowed to become more involved, I certainly think that our bank will take the position of doing so and feel that we can make money on it.

Mr. **Shamansky**. Do you feel that there would be a conflict of interest on the part of the bank with respect to its other customers in which it doesn't have an equity position?

Mr. **Freeman**. Well, certainly we are going to be interested in promoting products of a company, whether or not they might have an equity interest in an export trading company that we are part of.

In our particular market there are not that many companies that are competitors of one another. For the most part they are complementary products or products of an entirely different line, so that I do not see many situations where we have customers in our own market where we might discriminate against one in favor of another because the one might be a partner in an export trading company.

Mr. **Shamansky**. Thank you, Mr. Freeman.

Thank you, Mr. Chairman.

Mr. **Bonker**. Thank you.

Mrs. Fenwick.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

I am particularly struck by Mr. Van der Lande's experience. I think that is the best example of what we hope would be facilitated by the passage of H.R. 1799 or any of these bills, but I was also concerned by the last question even before my colleague asked it.

Yes, it may be true that in one particular area the companies would not be in competitive fields, but suppose they were? What does this legislation do to make sure that a bank will not confine its energies and activities to that company or those companies which have joined in forming a trading company and have involved the bank as a participant in the profits of that company? Does the practice of a bank insure that there shall be profits from even competing companies so that there would be no temptation to lean toward better service to those companies in which one has an interest?

Mr. **Poole**. Mrs. Fenwick, I take it that question is directed to me.

If I could, I would like to take advantage of that question to respond somewhat from the perspective of a business lawyer involved with business clients to the questions which Mr. Shamansky also raised.

First of all, I did not mention in my testimony the comments of Mr. Van der Lande in an effort to condense my remarks, but for the benefit of the audience, this is a small company which is very actively involved in selling blue jeans around the world.

Mrs. **Fenwick**. It is the best argument for the legislation that we are seeking.

Mr. **Poole**. I can suggest to you that is only one of the many examples which I could cite to the subcommittee at this point.

It has been my experience—I have been doing this sort of business for about 10 years now—when I am dealing with a new exporting manufacturer, which is probably about half of my practice, is helping people get into the export business, one of the first things that I do is to send them to the international department of one of our major banks. I tell them that that is the best possible source of free advice and assistance.

I have always really, frankly, been somewhat amazed at how a bank could afford to provide the kind of advice and assistance and hand-holding which they do provide through the international divisions and still make a profit.

I believe in response to Mr. Shamansky's question that there is no doubt that a bank could sell those services on a more profitable basis than they are currently selling them.

That is one of the reasons why I applaud this bill.

With regard to your specific question and the conflict potential, I do not believe that the legislation currently contains anything which would prevent that problem, nor do I believe that the legislation should contain anything to prevent that problem.

My reason for that statement is my belief that the economy and the market context will resolve that difficulty.

I have talked with a number of our bankers in Atlanta who are considering this. We represent a number of banks on a national and international scale. It is my opinion that in fact there is a potential for conflict.

I think this conflict is patently obvious and the lawyer in me also requires, as Mr. Shamansky has indicated, that the conflict be considered.

CONSOLIDATION OF INTERESTS

However, I think that this conflict will be resolved and the way it will be resolved is basically this: A bank will look very carefully at those companies with which it wants to become, in essence, a joint venture partner in export marketing.

Some banks may provide, I think the way this concept will evolve—and now we are only speculating as to what will happen—export service trading companies, and the banks will be a part of them.

They will offer that service to all of their customers across the board, in which event there is no conflict.

Mrs. **Fenwick**. Yes.

Mr. **Poole**. In addition to which, to the extent they become actively involved with a particular industry, they will probably do that by grouping a number of their customers who are involved in that industry.

For instance, in the textile and apparel industry, with my client Bernard Van der Lande, his bank will probably gather together a group of textile people or some of them will go from one bank to another; a bank which is willing to gather together an exporting trade association in the textile and apparel industry will attract various lines and help those companies develop an export trading company to market textile and apparel products.

They may, by joining in that joint venture, chase off some of their current customers because they may feel it is competitive with their current interests, but the economy will solve that problem.

If a current customer feels he is being prejudiced in some way, he will go to another bank. There are plenty of banks out there looking for the business.

I do not think this legislation or this Congress should meddle with that problem. I think that will be handled by the economy.

Mr. **Shamansky**. Will the gentlewoman yield?

Mrs. **Fenwick**. Of course.

Mr. **Shamansky**. If I may, apropos of this, on page 15 of H.R. 1799, beginning on line 17, paragraph (4) there, "No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances."

Mr. **Poole**. That was going to be my second comment. The legislation does provide there will not be more favorable terms given. While there is no doubt, regardless of that legislation, that the Huntington Bank would probably be more interested in promoting the exports of one of the companies with which they are involved, they still will not be able to loan money at a lower rate or under more favorable terms than they would otherwise give to their other customers.

By definition, I think this law has done everything that it needs to do and Congress should not allow itself to become involved in those other questions which will be resolved by the economy.

That is my view.

Mrs. **Fenwick**. When Juanita Kreps was Secretary of Commerce, she and I used to have long talks about this, the Webb-Pomerene Act. I am a very strong supporter of antitrust laws. I have voted for a number of such bills, Mr. Rodino's conspicuously, since I have been here in Congress.

COMPETITIVE DIFFICULTIES OF SMALL FIRMS

But there is a problem which must be recognized. These small companies cannot each send a trading representative to foreign trade fairs. It is important. I have lived abroad. I know what these conferences and expositions and exhibitions are.

It matters. They should be represented as was Mr. Van der Lande's company. His experience is familiar to me, because my father used to open some of these fairs in Spain and various companies would be represented, but which companies were there?

General Electric, Westinghouse, Ford, the big ones. They can always afford it. The little ones have never been able to send somebody around because it is too expensive and you can't be sure that you are going to bring in some orders.

Thank you, Mr. Chairman. I think this is very valuable.

Mr. BONKER. Thank you, Mrs. Fenwick.

Mr. Poole, one final question. There are not many critics of the bill, but there are some.

Mr. POOLE. One of whom is sitting at our table.

FEAR OF ANTITRUST LITIGATION

Mr. BONKER. They say the legislation is unnecessary, that there are trading companies now in existence. They have testified before this committee that all the bill does is provide unnecessarily antitrust immunity, gives banks kind of an open ticket into this market; and what we lack is the creativity and the will of the American business community to be more competitive so that this, in effect, is a free ticket.

How would you answer those charges?

If you wanted to form a trading company now, you could do so.

Mr. POOLE. There is no doubt. As a matter of fact, I have formed a number of export management companies and currently represent a number. The export management concept is relatively equivalent to an export trading company.

I appreciate the opportunity of responding in advance to some of my friend's comments.

Mr. BONKER. That wasn't my intention.

[Laughter.]

Mr. POOLE. What I would like to say in response to your specific question, Mr. Chairman, is that I believe the law is not redundant. I share the perspective of Mr. Freeman that many of the small exporters, particularly, are forestalled from entering the export marketplace because of "the hassle," the difficulties, the concerns, the fears.

The fear is basically the fear of the unknown. These people are doing relatively well with their domestic market and they do not believe that they have the incentive to pursue the international penetration because of the fact that there are just so many potential problems.

I also share the perspective of the businessman outside of Washington in the trenches that whenever the word "antitrust" is mentioned, the common reaction—even though as a lawyer I try to say "look, it is a bad word, but there are ways of resolving the difficulty and it is not really a true problem, and there are certain things that you can do in exporting, in joining together," in responding to Mr. Angoff's comments in advance, but the fact of the matter is that, regardless of how much we tell them that it is a resolvable problem, they don't believe it.

All they say is that, "If there is a potential for an antitrust claim to be asserted against me, I don't want to spend the next 3 years of my life arguing with the Justice Department lawyer in the Federal Court and I am not even going to talk about it."

So the reason that there have been so few relying upon the proposed advance certification procedure, which we are going to hear about in a moment, and so few actual applications and utilizations of the Webb-Pomerene associations is the reason that the smaller businessman and the people who really need this assistance are so deathly afraid of our Federal bureaucracy that they don't want to get involved with it and they are avoiding it.

I believe this is a message to those businessmen that we are saying to them, that you are saying to them don't worry about it, we understand your interest, we understand your concern and we are attempting to do something about it.

This is a message which the small exporters very desperately need, I believe.

I have had the privilege of attending many of these international expositions with several of my clients.

It is almost always the big companies that are there. The small companies need to be represented. The small companies need the encouragement. I believe that this type of legislation will do that.

Mr. **Shamansky**. Mr. Chairman, if I may, I have just one question.

Mr. **Bonker**. Certainly.

MARKET ECONOMY INSURES BANK COMPETITIVENESS

Mr. **Shamansky**. With respect to—I can direct this to Mr. Poole or to Mr. Freeman—the provision I just read says that the bank cannot give terms more favorable than those afforded similar borrowers in similar circumstances, but that does not necessarily cover the situation where the nonaffiliated potential borrower comes on the scene after the bank has already lent to the export trading company in which it has an equity interest and just simply denies a loan.

Mr. **Freeman**. Just looking again at our own particular market in the State of Ohio, if that should happen there are approximately 10 other Ohio banks that would probably be taking the same approach as Huntington in regard to export trading companies.

If this is a commercially feasible venture, I would imagine the second company would certainly have several other alternatives.

Mr. **Poole**. If I could respond also, Mr. Shamansky, I agree with the first point that again, as I indicated, the market economy will resolve the risk.

The concern that I have though is the danger of imposing a specter of bureaucracy upon a bank which is interested in doing these sort of things to the extent that once it extends credit to an export trading company, and someone else walks in their door and for sound business decisions, they deny the credit for this company or say, "Because of the risk, the additional risk is that we are going to have to charge you two more points of interest or require a personal guarantee," the concern that I have about the implementation of this paragraph is that it may provide a real discouragement to a bank from getting involved at all in the export trading companies, because of the concern that they are going to have to justify every sound business decision they make.

Mr. SHAMANSKY. This legislation doesn't address itself to that situation.

Mr. POOLE. It does by implication address itself to that.

Mr. SHAMANSKY. I would love to argue that case in court.

Mr. POOLE. I agree. I can argue the other side also.

Mrs. FENWICK. That is the trouble with lawyers.

Mr. SHAMANSKY. No; that is what is good about them. [Laughter.]

Mr. POOLE. That is the advantage.

Mr. BONKER. Thank you, Mr. Shamansky.

Messrs. Freeman and Poole, you may want to remain at the table.

We will now proceed with our third and final witness, Mr. Jay Angoff, a staff attorney of Congress Watch.

The committee welcomes you and is very anxious to hear your testimony, Mr. Angoff.

STATEMENT OF JAY ANGOFF, STAFF ATTORNEY, CONGRESS WATCH

Mr. ANGOFF. Thank you, Mr. Chairman.

Mr. BONKER. May I state that the Chairman, Mr. Bingham, is present now, and that the official record should note his presence.

Mr. ANGOFF. Mr. Chairman, I am Jay Angoff, a lawyer with Congress Watch, which is a public interest advocacy group founded by Ralph Nader. I appreciate the opportunity you have given me to testify today.

TRADING COMPANIES AS GIMMICKS

Promoting exports is certainly a worthwhile goal, but enacting export trading company legislation is not the way to achieve that goal. For the export trading company bills, as the Wall Street Journal has observed, are mere gimmickry. They would do little, if anything, to encourage exports.

On the other hand, they would do substantial damage in at least five different areas. They would seriously impair effective antitrust enforcement; they would create a burdensome and unwieldy bureaucracy; they would undercut U.S. efforts to promote free trade and eliminate restraints on competition abroad; they would give banks tremendous leverage to tie export access to banking services and would thus exert a strong anti-competitive force in domestic banking markets; and they would expand a wasteful and inefficient tax expenditure that will cost the Treasury $1.8 billion in fiscal 1982.

Most important, export trading company legislation completely fails to come to grips with the real problems facing American business.

IMPAIR ANTITRUST ENFORCEMENT

I would like to mention each of these areas briefly with particular emphasis on the antitrust problems.

Concerning antitrust, under all the export trading company bills, the Commerce Department could immunize from the antitrust laws the "export trade activities and methods of operations" of associations of exporting firms that met certain criteria.

If Commerce later determined that the activities of operations of these associations had substantial anticompetitive effects in the U.S. it could revoke their immunity.

However, neither private parties nor the government could sue the associations for damages, even if the export activities or methods of operations of these associations did have significant anticompetitive effects in the U.S., and even if private parties did suffer significant competitive injury as a result of those activities or operations.

The need for such an antitrust immunity and certification procedure—and the closing of the courts to small businessmen, consumers, and state and local governments injured by the immunized activities of export associations is based on the premise that antitrust uncertainty now prevents American firms from working together to promote exports.

Members of this committee have no doubt heard this argument repeated many times.

Yet, as the Chief of the Antitrust Division's Foreign Commerce Section has said, "for all the frequency and vigor with which it is articulated, it is almost never accompanied by examples of transactions which, although lawful, have been deterred because of antitrust uncertainty."

The reason we have not heard such examples is that the antitrust laws only apply, as the courts have uniformly ruled, to conduct that has a direct and substantial effect on U.S. commerce.

U.S. firms are now and have always been free to fix prices, divide up markets and engage in any other practice that restricts competition overseas as long as those practices do not spill over into the U.S.

The antitrust laws do not apply to such activity not because Congress approved of American companies fixing prices overseas, but simply because the requisite effect on commerce in the U.S. to bring the activity under U.S. antitrust jurisdiction is lacking.

Nevertheless, if any doubt remained about the question of whether the antitrust laws applied, Congress eliminated that doubt in 1918 when it passed the Webb-Pomerene Act. Webb-Pomerene is an express exemption from the Sherman Act which definitively permits U.S. firms to form export associations, in effect, export cartels—to market their goods abroad.

In addition, in 1978 the Interagency Export Policy Task Force, after undertaking an exhaustive investigation of export disincentives, found no substantial evidence of lost business or of foreign projects which would have been undertaken absent antitrust prohibitions. And a 1980 Commerce Department report on export disincentives expressly concluded that no specific instances were shown of the antitrust laws unduly restricting exports.

Most significant, in 1978 Justice instituted and widely publicized its new Business Review Procedure pursuant to which it would announce its enforcement intentions with respect to any proposed export project within 30 days.

During the more than two years this procedure has been in effect, Justice has received exactly one request, on which it acted favorably.

It would seem then that export activities that have been deterred by antitrust uncertainty are like the emperor's new clothes; they don't exit.

What export trading company legislation would do is to give protection to exporting firms with respect to the effects in domestic markets of their activities.

That may be what this committee wants to do, for both H.R. 1648 and H.R. 1799 expressly provide that even if Commerce later determined that the activities of an association it had immunized were restraining trade in the U.S., Commerce could revoke its immunity but neither private parties nor the government could sue the association for damages.

My point is, we cannot have the immunization and certification procedures contained in the bills and at the same time effective antitrust enforcement at home.

I would like to mention briefly a report in 1979 by the National Commission for the reform of antitrust law and procedures, a distinguished commission which included both Mr. Rodino, the Judiciary Committee Chariman, and the ranking minority member, Mr. McClory.

This commission recommended that Webb-Pomerene, far from being expanded as it would be in the export trading company legislation, should be either eliminated or limited.

It made this recommendation because it said that Webb-Pomerene, as drafted, creates opportunities for significant anti-competitive spillover effects in domestic commerce; that it creates an adverse environment for pro-competitive diplomatic initiatives, and that the pro-competitive purpose of Webb-Pomerene associations could be accomplished without antitrust immunity.

If this conclusion was valid in 1979, it would certainly seem to be valid today just two years later.

ADDITIONAL BURDENSOME BUREAUCRACY

Concerning the bureaucracy that export trading company legislation would set up, I have reproduced the section from the bill that passed the Senate on pages 7 and 8 of my testimony. What that bill would do, to the best of my understanding, is require those seeking immunity to file a long application with the Commerce Department; then Commerce, after reviewing the application and checking with Justice and the FTC, would certify the application as immune from the antitrust laws if it found it met certain criteria; Commerce could try to revoke an association's antitrust immunity; the export association could command a hearing on the proposed revocation; and the Justice Department and the FTC could sue in Federal court to try to have an association's antitrust immunity revoked.

What your bill would do is simply provide that Commerce immunize an association within ninety days of its application and that it need only consult with Justice and the FTC and deliver a copy of its certification to them.

But, on the other hand, this procedure virtually assures that antitrust considerations will be given short shrift. As Mr. Baldridge made clear in testimony before this committee, Commerce's job is to promote trade, not to enforce the antitrust laws. it is certainly not going to let the latter stand in the way of the former.

FOREIGN POLICY IMPLICATIONS

Third, the foreign policy implications of this legislation.

Since 1934, when the Reciprocal Trade Act was passed, the United States has been a leader in opening up world trade by removing governmental restraints. After World War II, we encouraged the creation of antitrust laws in Germany and Japan, decartelized their industries, and initiated antitrust prosecution of the major international cartels remaining after the war.

We continue to try to influence other nations toward pro-competitive, free-market principles, and other nations have asked us to endorse the principle that no nation should foster export cartels.

Export trading company legislation, which would expressly seek to foster export cartels, would therefore be an embarrassment to the U.S., and would create an adverse environment for pro-competitive diplomatic initiatives.

PROBLEMS WITH DISC

In the tax area, export trading company legislation adopts the DISC provision. Those were created in 1971 under the Nixon Administration to promote exports.

However, according to those who favor DISC themselves, it hasn't had this effect.

For example, David Garfield, the Chairman of a pro-DISC lobbying group, told the Washington Post in 1978, "We don't pass on DISC benefits into lower prices and increased exports. We keep it as an incentive to us. We have more profit."

Moreover, as the Department of Treasury has reported, "the beneficiaries of the DISC legislation tend to be the largest and most profitable U.S. companies. DISC helps little and may actually harm footwear, textile and steel producers facing competition from imports."

The 1980 Commerce report was lukewarm about retaining DISC and recommended against expanding it, and the Treasury in 1978 called DISC "an anachronism in a world of flexible exchange rates, and a costly and wasteful anachronism at that."

If export company legislation is passed and Congress wants to give individual exporting companies and associations of export trading companies the same treatment, then it should repeal DISC, which will cost the Treasury $1.8 billion in fiscal 1982, rather than expand it.

Finally, concerning banking, I think that even the witnesses at this table have at least recognized the possibility for conflict in the banking provisions under the bill.

But all the above drawbacks of export trading company legislation, I think, are not as serious as the fact that this legislation fails to come to grips with the real problem.

ECONOMIC DECLINE OF AMERICAN COMPANIES

The real problem is what many people call the competence and motivation of American companies. Or as a recent article in the Harvard Business Review said, "We are managing our way to economic decline."

What then are the reasons that American business has not improved its export performance?

First, American corporations often invest in politics rather than products.

As David Vogel of the business school at the University of California at Berkeley has noted, "Unless the private sector's own pattern of incentives and training is reformed, U.S.-managed companies are likely to continue to lose market share to foreign competitors.

"Instead of hiring more lobbyists, American companies should promote more engineers."

Second, American firms have simply failed to develop foreign markets. They have failed to learn foreign languages, or the customs and needs of other people.

Third, American business is entrapped in a culture of poverty. It has become so dependent on Government aid of various kinds, from bailouts to tax subsidies to protective Government regulation to price supports to import quotas, that it is no longer able to, or no longer has the will to, stand on its own two feet.

Fourth, American management is often obsessed with short run profits and ignores long-term planning.

In addition, the unsatisfactory export performance of American firms may be due in part to management techniques.

Just as there is a limit to what Government can do to help the poor, blind, old and disabled, as the administration continually emphasizes, there is a limit to what Government can do to help business.

But Government, and in particular Congress, can take some action. It can encourge business to invest in products rather than politics by showing that investing in politics doesn't pay.

It can encourgae the learning of foreign languages and customs by expanding aid to education in these areas and by building on programs like the Peace Corps.

It can extricate business from its cocoon of dependence on public money—it can help restore the entrepreneurial spirit—by simply refusing to bail out corporations that have failed. And it can certainly take action in the labor-management relations area.

But export trading company legislation will do little, if anything, to benefit exports, while imposing substantial costs in the five areas described above. The Wall Street Journal may well have said it best. Export trading company legislation, it editorialized last year, "is mere gimmickry. It is being marketed under the false pretense that it will help encourage the development of American trading companies comparable to Japanese trading companies that have been so effective in selling Japanese wares around the world."

But, the Journal continued, "The success of Japanese trading companies lies not in their ownership structures or their antitrust freedoms, but in their detailed knowledge of production sources and market opportunities around the world, as well as their logistical skills in carrying through complicated international transactions. Nothing stops American firms from offering similar services."

Rather than seeking immunity from the antitrust laws, the Journal concluded, "the attention of businessmen would be better directed to learning about foreign markets and selling there."

The most effective step this committee could take to promote exports is to send a loud and clear signal to the business community that they must learn about foreign markets and selling there, and cannot depend on quick files like antitrust immunity. I therefore respectfully urge you to oppose export trading company legislation.

Mr. ANGOFF. I would like to say I very much appreciate being asked to testify here, particularly because we are in the minority.

Mr. BONKER. That is not an unusual role for Congress Watch.

Mr. ANGOFF. No, it is not, and it is getting less unusual.

[Mr. Angoff's prepared statement follows:]

PREPARED STATEMENT OF JAY ANGOFF, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Mr. Chairman, members of the subcommittee:

My name is Jay Angoff, and I am a staff attorney with Public Citizen's Congress Watch, a public interest advocacy group founded by Ralph Nader. Public Citizen is a nationwide consumer organization with approximately 70,000 contributors annually.

Promoting exports is certainly a worthwhile goal, but enacting export trading company legislation is not the way to achieve that goal. For the export trading company bills, as the Wall Street Journal has observed, are "mere gimmickry";[1] they would do little, if anything, to encourage exports. On the other hand, they would do substantial damage in at least five different areas. They would seriously impair effective antitrust enforcement; they would create a burdensome and unwieldy bureaucracy; they would undercut U.S. efforts to promote free trade and eliminate restraints on competition abroad; they would give banks tremendous leverage to tie export access to banking services and would thus exert a strong anticompetitive force in domestic banking markets; and they would expand a wasteful and inefficient tax expenditure that will cost the Treasury $1.8 billion in fiscal 1982.

Most important, export trading company legislation completely fails to come to grips with the real problems facing American business.

I. THE EFFECT OF EXPORT TRADING COMPANY LEGISLATION ON ANTITRUST ENFORCEMENT

Under all the export trading company bills, the Commerce Department could immunize from the antitrust laws the export trade activities and methods of operations of associations of exporting firms that met certain criteria. If Commerce later determined that the activities or operations of these associations had substantial anticompetitive effects in the United States it could revoke their immunity. However, neither private parties nor the Government could sue the associations for damages—even if the export activities or methods of operation of these associations did have significant anticompetitive effects in the United States, and even if private parties did suffer significant competitive injury as a result of those activities or operations.

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[1] Wall Street Journal, Sept. 2, 1980.

THE EMPEROR'S NEW CLOTHES

The need for such an antitrust immunity and certification procedure—and the closing of the courts to small businessmen, consumers, and State and local governments injured by the immunized activities of export associations—is based on the premise that antitrust uncertainty now prevents American firms from working together to promote exports. Members of this committee have no doubt heard this repeated many times. Yet, as the Chief of the Antitrust Division's Foreign Commerce Section has said, "for all the frequency and vigor with which it is articulated, it is almost never accompanied by examples of transactions which, although lawful, have been deterred because of antitrust uncertainty." [2]

The reason we have not heard such examples is that the antitrust laws only apply, as the Courts have uniformly ruled, to conduct that has a direct and substantial effect on U.S. commerce. [3]

U.S. firms are now and have always been free to fix prices, divide up markets and engage in any other practice that restricts competition overseas as long as those practices do not spill over into the United States.

The antitrust laws do not apply to such activity not because Congress approved of American companies fixing prices overseas, but simply because the requisite effect on commerce in the United States to bring the activity under U.S. antitrust jurisdiction is lacking.

Nevertheless, in 1918 Congress, after listening to the same arguments it is hearing now about the uncertainty of the application of the antitrust laws to export activities, passed the Webb-Pomerene Act. Webb-Pomerene is an express exemption from the Sherman Act which definitively permits U.S. firms to form export associations—in effect export cartels—to market their goods abroad.

In addition, in 1978 the Interagency Export Policy Task Force, after undertaking an exhaustive investigation of export disincentives, found no substantial evidence of lost business or of foreign projects which would have been undertaken absent antitrust prohibitions. [4] And a 1980 Commerce Department report on export disincentives expressly concluded that "no specific instances were shown of [the antitrust] laws unduly restricting exports." [5]

Moreover, the Justice Department has taken steps to eliminate even the possibility of doubt about the reach of the antitrust laws. In 1977, for example, it issued its "Antitrust Guide for International Operations," which gave detailed examples of how the antitrust laws are applied in international commerce. And last year it issued its "Antitrust Guide concerning Research Joint Ventures," for those professing concern about the application of the antitrust laws to such enterprises.

Most significant, in 1978 Justice instituted and widely publicized its new Business Review Procedure pursuant to which it would announce its enforcement intentions with respect to any proposed export project within 30 days. During the more than two years this procedure has been in effect, Justice has received exactly one request (on which it acted favorably). [6] If U.S. firms were really uncertain about the application of the antitrust laws, it would seem that they would have sought out Justice's advice more frequently.

It would seem, then, that export activities that have been deterred by antitrust uncertainty are like the emperor's new clothes; they don't exist. Export trading company legislation therefore would not give any more protection to exporting firms with respect to the effects in foreign markets of their activities, since those effects have never been actionable under our antitrust laws. What it would do is to give protection to exporting firms with respect to the effects in domestic markets of their activities. For both HR 1648 and HR 1799 expressly provide that even if Commerce later determined that the activities of an association it had immunized were restraining trade in the United States, Commerce could revoke its immunity but neither private parties nor the government could sue the association for damages.

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[2] C. Stark, Antitrust and U.S. Export Competitiveness, at 3 (Jan. 21, 1981).

[3] *See Timberlane Lumber Co.* v. *Bank of America*, 549 F.2d 597, 608–615 (9th Cir. 1976); *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 443–444 (2d Cir. 1945); *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 285–289 (1952); *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690, 704–705 (1961).

[4] *See* Statement of Ky. P. Ewing, Dep. Asst. Atty. Gen., Antitrust Division, before the Subcommittee on International Trade of the Senate Banking Committee, Sept. 10, 1979, at 8.

[5] *See* Stark, *supra* note 2, at 3–4.

[6] *Id.*, at 5.

SHOULD WE ABOLISH THE ANTITRUST LAWS?

There are those who say that this is exactly what the law should be or that we should go even farther in softening the antitrust laws. MIT economist Lester Thurow, for example, says that the antitrust laws have outlived their usefulness and should be abolished.[7] And former Senator Adlai Stevenson, in testifying in favor of the Pfizer bill before Senator Thurmond's Judiciary Committee maintained that U.S. antitrust policy was "grounded in economic assumptions of the last century" and was today "irrelevant." Economic concentration, according to Stevenson, could promote "the efficient distribution of goods and technological processes," and thus the antitrust laws should not be concerned about it.[8]

Others believe, on the other hand, that far from being an impediment to efficient distribution or technological progress, the antitrust laws encourage both—both at home and abroad. Or as Chairman Rodino has put it, "vigorous competition in the domestic market, a condition our antitrust laws are designed to protect, is a prescription for export success."[9] In fact, the failures of some of our industries which are complaining the loudest about foreign competition—such as autos and steel—spring from "inadequate antitrust enforcement rather than excessively stringent antitrust," as Northwestern University economist Fred Scherer recently told the Monopolies Subcommittee.[10]

My purpose, however, is not to argue the merits of conscientious domestic antitrust enforcement. Rather, I simply want to stress that the export trading company legislation would seriously impair antitrust enforcement with respect to the domestic effects of the activities of immunized export trade associations. If this Committee wants to make the judgment that the benefits of the antitrust immunization and certification procedure contained in the export trading company bills outweigh the harm to small businessmen, consumers and state and local governments injured by immunized associations but barred from suing, it is of course free to do so. But we can not have such an immunization and certification procedure and effective antitrust enforcement at home at the same time.

THE NCRALP REPORT: ELIMINATE OR LIMIT WEBB POMERENE, DON'T EXPAND IT

It should also be emphasized that in 1979 the blue ribbon National Commission for the Reform of Antitrust Law and Procedures, which included both the Chairman and the ranking minority member of the Judiciary Committee and the Monopolies Subcommittee, concluded that the Webb-Pomerene exemption, far from being expanded, as in the export trading company legislation, should either be eliminated or made contingent on a showing of need.[11] It made this recommendation for the following reasons:

1. Webb-Pomerene has not served its intended purpose. Although it was intended to result in the formation of hundreds of associations serving as joint selling agencies for small firms, it has not had this effect. To the contrary, a 1967 FTC study showed that between 1918, when the Act was passed, and 1965, only 130 active associations applied for a Webb-Pomerene exemption. As of November 1978, only 29 Webb-Pomerene associations existed, accounting for less than 2 percent of export sales. Moreover, although the Webb exemption was intended to help small firms, "larger firms accounted for nearly 80 percent of all exports assisted by the Webb exemption," according to the National Commission. Finally, the Commission found that Webb Associations "have limited their commercial activities to fixing prices rather than performing selling and exporting functions which are now handled by the individual members. Thus, the common features of export associations today is not their performance or efficiency or cost-reducing functions, but rather the pursuit of traditional cartel-related activities."

2. By encouraging anticompetitive combinations in export trade, Webb-Pomerene invites the opportunity for similar restraints in domestic trade. The commission stated, "While there have been instances of an exporting agreement being overtly

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[7] L. Thurow, "Let's Abolish the Antitrust Laws," The New York Times, Oct. 19, 1980, at 3:2.

[8] Statement of Adlai Stevenson, on behalf of National Association of Manufacturers, before the Senate Judiciary Committee, Apr. 20, 1981.

[9] P. Rodino, "Domestic Antitrust Protection Needn't Be Sacrificed to Assist Exporters," LA Times, Apr. 5, 1981, at VI:3.

[10] Statement of F. M. Scherer, before the Subcommittee on Monopolies and Commercial Law, House Judiciary Committee, Apr. 30, 1981.

[11] *See* Report to the President and the Attorney General of the National Commission for the Review of Antitrust and Procedures, Jan. 22, 1979, 897 BNA Antitrust, and Trade Reg. Rep., Spec. Supp. (Jan. 18, 1979).

extended to the domestic market, the more likely 'spillover' effect of export associations relates to the exchange among domestic producers in oligopolistic markets of export information on future prices, costs, and production. The exchange of such information regarding foreign markets, all of which the Webb Act permits, can facilitate parallel pricing in the domestic market, or enable large oligopolists to coexist both at home and abroad."

3. U.S. firms do not need to be able to form cartels to be able to compete abroad with foreign cartels. As the Commission explained, "traditional cartel theory shows that firms operating outside of cartels often benefit from the high prices set by cartels," since firms outside the cartel are free to charge a lower price to take business away from the cartel. This conclusion is strengthened by the fact that firms applying for Webb immunity rarely cited protection from a foreign cartel as a reason for seeking the Webb exemption.

4. The Webb-Pomerene exemption undercuts the U.S. position in urging free trade and antitrust throughout the world. As one witness described it, "Webb-Pomerene is a bloody embarrassment to the U.S."; and it has spawned other cartels.

The Commission concluded: "The Act as drafted creates opportunities for significant anticompetitive spillover effects in domestic commerce. It creates an adverse environment for pro-competitive diplomatic initiatives. It would seem, moreover, that the pro-competitive purposes of Webb associations could be accomplished without antitrust immunity. In short, the methodological approach utilized by the Commission, when applied to the Webb-Pemerene Act immunity, would on the current record, counsel its elimination."

The Commission's words are certainly as valid now as they were in 1979.

II. THE NEW BUREAUCRACY CREATED BY EXPORT TRADING COMPANY LEGISLATION

It is ironic that today, when we are all trying to cut back on government interference in and regulation of the private affairs of business, a bill containing the following provisions passed the Senate 93–0:

"Sec. 4. Certification.

"(a) Procedure for Application.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities, or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five-day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five-day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(4) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application for certification, or for an amendment of a certificate, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company, afford it an opportunity for reconsideration with respect to that determination.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade activities, or methods or operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—

"(1) The Secretary on his own initiative shall, upon a determination that the export trade, export trade activities or methods of operation of an association or export trading company no longer comply with the requirements of section 2 of this Act revoke its certificate or make such amendments as may be necessary to comply with the requirements of such section.

"(2) Prior to revoking or amending a certificate, the Secretary shall—

"(A) notify the holder of the certificate in writing of the facts or conduct which may warrant the action, and

"(B) provide the holder of the certificate an opportunity for such hearing as may be appropriate in the circumstances.

"(3) Before revoking or amending a certificate pursuant to this subsection the Secretary may in his discretion provide the holder of the certificate an opportunity to achieve compliance within a reasonable period of time not to exceed ninety days, except that nothing in this paragraph shall affect any action under section 4(e) of this Act.

"(e) ACTION FOR REVOCATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the ground that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), the Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for revocation, thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order revoking the certificate or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption its held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

As best I can understand it, these provisions mean that those seeking immunity would need to file a long and burdensome application with the Commerce Department; Commerce, after reviewing the application and checking with Justice and the FTC, would certify the application as immune from the antitrust laws if it found that it met certain criteria; Commerce could try to revoke an export association's antitrust immunity if it determined that it no longer met certain criteria; the export association could demand a hearing on the proposed revocation; and the Justice Department and the FTC could sue in federal court to try to have an association's antitrust immunity revoked if Commerce refused.

With respect to the bureaucratic burdens imposed, the provision in HR 1648 is clearly superior to the one in the Senate bill, which is virtually identical to HR 1799: HR 1648 simply provides that Commerce shall immunize an association within 90 days of its application, and that it need only "consult" with Justice and the FTC and deliver a copy of its certification of immunity to them. But this procedure virtually ensures that antitrust considerations will be given short shrift. As the testimony of Secretary Baldridge before this Committee and others has made all too clear, Commerce's job is to promote trade, not enforce antitrust laws, and it is certainly not going to let the latter stand in the way of the former.

III. FOREIGN POLICY IMPLICATIONS OF EXPORT TRADING COMPANY LEGISLATION

Since the Reciprocal Trade Act of 1934, the U.S. has been a leader in opening up world trade by removing governmental restraints. After World War II, we encouraged the creation of antitrust laws in Germany and Japan, decartelized their industries, and initiated antitrust prosecution of the major international cartels remaining after the War. We continue to try to influence other nations toward pro-competitive, free-market principles, and other nations have asked us to endorse the principle that no nation should foster export cartels.

Export trading company legislation—which would expressly seek to foster export cartels—would therefore be an embarrassment to the U.S., and would create an adverse environment for pro-competitive diplomatic initiatives.

IV. EXPANSION OF THE DISC SUBSIDY UNDER EXPORT TRADING COMPANY LEGISLATION

HR 1648 extends the Domestic International Sales Corporation provisions of the Internal Revenue Code, which are contained in §§ 991–997 of the Code, to export trading associations. Under the DISC provisions, which the Nixon administration created in 1971, exporting corporations are authorized to set up paper subsidiaries and to defer indefinitely a portion of the taxes on their profits from sales to foreign countries. Although DISC was supposed to increase exports, particularly for small firms, it has not had this effect. In fact, David Garfield, the Chairman of a pro-DISC lobbying group, told the Washington Post in 1978, "We don't pass on DISC benefits into lower prices and increased exports. We keep it as an incentive to us. We have more profit." Moreover, as the Department of Treasury has reported, "the beneficiaries of the DISC legislation tend to be the largest and most profitable U.S. companies. DISC helps little, and may actually harm, footwear, textile, and steel producers facing competition from imports."[12]

The 1980 Commerce Report was lukewarm about retaining DISC and recommended against expanding it, and the Treasury in 1978 called DISC "an anachronism in a world of flexible exchange rates, and a costly and wasteful anachronism at that."[13]

If export company legislation is passed and Congress wants to give individual exporting companies and associations of export trading companies the same treatment, then it should repeal DISC—which will cost the Treasury $1.8 billion in fiscal 1982—rather than expand it.

V. THE MERGING OF BANKING AND COMMERCE UNDER EXPORT TRADING COMPANY LEGISLATION

At present various federal banking laws—primarily the Glass-Stegall Act, the Bank Holding Company Act, and the Edge Act—prohibit banks from owning export trading companies or conducting export trade. Title 1 of the export trading company legislation would reverse this long-standing policy.

Such a reversal is ill advised for the following reasons. First, banks owning large export trading companies that have access to foreign markets would be well situated to pressure firms seeking to export to use their credit, deposit and other banking services. Large money center banks could well gain favorable access to import markets in foreign countries where they are a major source of government credit. Clearly, ownership of export trading companies would give large money center banks tremendous leverage to tie export access to banking services and would thereby exert strong anti-competitive force in domestic banking markets. In fact, if large banks found that extensive export operations generated substantial profits in domestic banking markets, then they would most likely pursue aggressive market strategies that would inhibit the formation of export trading companies by non-bank institutions.

Additionally, the prospect of large earnings from export trading companies could well encourage banks to operate their trading company subsidiaries in a risky, highly leveraged manner. When disruptions occur in international trade markets, this could result in substantial losses and a drain on bank capital. Bank ownership of export trading companies could also lead to a misallocation of credit as banks shift their lending patterns to accommodate their export clients. As the Federal Reserve Board stated in testimony last year opposing bank control of export trading companies, "the traditional separation of banking and commerce * * * helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector."

The banks also argue that bankers' expertise in international transactions will prove to be of great value to export trading companies. Yet, banks already provide exporters with extensive trade services, including financing, foreign exchange, and market information, and they need not own or control export trading companies in order to service them. Moreover, the poor performance during the 1970's of many non-bank subsidiaries of bank holding companies suggests strongly that bankers, in fact, do not possess great expertise when it comes to management of non-bank activities.

Finally, as the Federal Reserve Board has testified, bank control of export trading companies would require a large increase in federal banking regulation. The banking agencies would have to examine export trading companies, establish standards that would govern how bank-controlled export trading companies could take title to goods in trade, and carefully scrutinize all loans made by banks controlling export trading companies to firms dealing with their trade companies to insure that the loans were not made on preferential terms. If the bankers' forecast of a dominant bank role in the export trade sector is accurate, then in essence the bill will extend federal bank regulation to the export trade sector.

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[12] The President's 1978 Tax Program, Dept. of Treasury, at 276 (Jan. 30, 1978).

[13] *Id.*, at 275.

VI. THE FAILURE OF EXPORT TRADING COMPANY LEGISLATION TO COME TO GRIPS WITH THE REAL PROBLEM

But all the above drawbacks of export trading company legislation—the impediment it would present to effective domestic antitrust enforcement, its creation of a burdensome bureaucracy, the damage it would do to our pro-competitive foreign policy initiatives, the potential for abuse inherent in eradicating the separation between commerce and banking, and its expansion of the expensive and ineffective DISC provisions—pale by comparison to the most serious defect of export trading company legislation: it fails completely to come to grips with, or to do anything to solve, the real problem. The real problem is what the former director of the Antitrust Division's Office of Policy Planning calls "the competence and motivation of American companies"[14] as exporters. Or as Hager and Abernathy observed in their recent article in the Harvard Business Review, "We're managing our way to economic decline."[15]

What then are the reasons that American business has not improved its export performance? First, American corporations often invest in politics rather than products. As David Vogel of the business school at the University of California at Berkeley has noted, "unless the private sector's own pattern of incentives and training is reformed, U.S. managed companies are likely to continue to lose market share to foreign competitors. Instead of hiring more lobbyists, American companies should promote more engineers."[16]

Second, American firms have simply failed to develop foreign markets. They have failed to learn foreign languages, or the customs and needs of other people. Similarly, there is a failure to study the same areas, and instead a preoccupation with finance, in business schools: they "ignore foreign language training and place little emphasis on teaching students to understand foreign cultures."[17]

Third, American business is entrapped in a culture of poverty. It has become so dependent on government aid of various kinds—from bailouts to tax subsidies to protective government regulation to price supports to import quotas—that it is no longer able to, or no longer has the will to, stand on its own two feet. A small entrepreneur, Melvyn Klein of the Atamil Corporation, explained this to the Joint Economic Committee:

"Historically, economic growth has been driven by the reward/penalty structure associated with risk-taking and entrepreneurship. During the last generation, that structure has been undermined by the federal policies which have installed safety nets to eliminate the risk of free-fall for large corporate entities. Those policies tend to weaken the desire and the need to create new products, processes and markets to insure continued corporate survival."[18]

Fourth, American management is often obsessed with short run profits and ignores long-term planning. As another small entrepreneur, Dee D'Arbeloff of the Millipore Corporation told the Joint Economic Committee, "The reward/penalty structure within many corporations tends to be as short-run oriented as a politician's next election. Bonuses, salaries and promotions are too often dependent on this year's increase of profits over last year."[19]

In addition, Mr. D'Arbeloff continued, "The financial community tends to have a short-run perspective which adds to the myopia of the rest of the business community."

In addition, the unsatisfactory export performance of American firms may be due in part to management techniques. It is because of their superiority in this area—and not their export trading companies—that the Japanese so often beat American firms head-to-head. For example, when Motorola ran a television plant in Illinois, inspectors found 140 defects per 100 sets. After Matsushita bought it, the number of defects dropped to 6 per 100. Here is the recipe Sadami Wada, a Sony vice President, gave for superior management: (1) Take personnel expenses as fixed costs, rather than variable costs. (2) Educate workers at all levels. (3) Let every worker be conscious of quality. (4) Let every worker have the sense of participation. (5) Try to increase the flow of communication. (6) Show the direction the company is taking towards the future. (7) Make generalists at every level. (8) Understand that in the total process, productivity is not only a matter of efficiency but also of human nature.[20]

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[14] J. Davidow, Antitrust, International Policy, and Merger and Control, at 13 (Aug. 28, 1980).

[15] R. Hager and W. Abernathy, "Managing Our Way to Economic Decline," Harvard Business Review, July-Aug. 1980, at 67.

[16] D. Vogel, "America's Management Crisis," The New Republic, Feb. 7, 1981, at 23.

[17] *Id.*

[18] Statement of Melvyn N. Klein before the Joint Economic Committee, May 11, 1981, at 5.

[19] Statement of Dimitri D'Arbeloff before the Joint Economic Committee, May 11, 1981, at 6.

CONCLUSION

Just as there is a limit to what government can do to help the poor, blind, old and disabled, as the Administration continually emphasizes, there is a limit to what government can do to help business. But government, and in particular Congress, can take some action. It can encourage business to invest in products rather than politics by showing that investing in politics doesn't pay. It can encourage the learning of foreign languages and customs by expanding aid to education in these areas and by building on programs like the Peace Corps. It can extricate business from its cocoon of dependence on public money—it can help restore the entrepreneurial spirit—by simply refusing to bail out corporations that have failed. And it can certainly take action in the labor-management relations area.

But export trading company legislation will do little if anything to benefit exports, while imposing substantial costs in the five areas described above. The Wall Street Journal may well have said it best. Export trading company legislation, it editorialized last year, "is mere gimmickry. It is being marketed under the false pretense that it will help encourage the development of American trading companies comparable to [Japanese trading companies] that have been so effective in selling Japanese wares around the world."

But, the Journal continued, "The success of Japanese trading companies lies not in their ownership structures or their antitrust freedoms, but in their detailed knowledge of production sources and market opportunities around the world, as well as their logistical skills in carrying through complicated international transactions. Nothing stops American firms from offering similar services. * * *"

Rather than seeking immunity from the antitrust laws, the Journal concluded, "the attention of businessmen would be better directed to learning about foreign markets and selling there." [21]

The most effective step this Committee could take to promote exports is to send a loud and clear signal to the business community that they must learn about foreign markets and selling there, and cannot depend on quick fixes like antitrust immunity. I therefore respectfully urge you to oppose export trading company legislation.

Mr. **Bonker**. Thank you, Mr. Angoff, for being here today and for your testimony.

WHO WILL BILL BENEFIT?

I thought Mrs. Fenwick raised an interesting point in her colloquy with Mr. Poole. In the international market, it is the multinational corporations that are most active.

My support of this legislation throughout has been based on the assumption that we want to see more of our medium-sized and smaller firms participate in the world market.

One reason we are losing out in this fiercely competitive world market is because we have not really expanded our export potential.

Indeed, we have watched it contract over the years.

In the Pacific rim countries somewhere between 60 and 80 percent of their entire industrial output is now involved in the world market. That is because through trading companies, their smaller-size firms and companies, manufacturers, are able to compete.

In the United States, by contrast, less than two percent of our industrial output is now involved in the world market, and mostly multinational corporations.

That would be strange indeed to have Congress Watch testify against legislation that is really aimed to benefit small-sized firms to give them the potential to be more competitive while the multinationals grow.

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[20] Statement of Sadami Wada before the Joint Economic Committee, May 1, 1981, at 24.

[21] Wall Street Journal, *Supra* note 1.

I can bring this into a practical scale. In my area of the country, because it is the Weyerhausers and the Georgia Pacifics and the large corporations that are getting the edge on the wood products, the pulp and paper products in the world market, the smaller sized firms are being closed all up and down my district because they do not have any access to the world market.

Maybe this bill isn't the answer, but many people feel that it is.

At least it is a positive sign and gives them some encouragement; banks, in terms of financing the formation of these trading companies, would make it possible for our small-sized companies to be more competitive.

How can Congress Watch testify against legislation with that objective?

Mr. ANGOFF. Mr. Chairman, I certainly agree with your objective. I think most people do.

I specifically agree with your objective of trying to promote exports among small- and medium-sized companies.

This bill, though, I don't think is the answer. We see Mr. Freeman and Mr. Poole here. Mr. Freeman is in charge of a relatively small bank, one of the second fifty.

Mr. Poole's people from Georgia are not the multinational corporations. The people really pushing this bill are not Mr. Poole and Mr. Freeman, but the Emergency Committee for American Trade. Those are the Weyerhausers and the Exxons.

Mr. BONKER. I am not sure I agree with that.

As the principal sponsor of the bill, I have really not felt pressure. The bill certainly didn't originate from this source.

I do know the large corporations in my district are lukewarm to this legislation. It is the small firms who really are getting excited about the full potential of this bill.

I don't think you can characterize it as an instrument of the opposition, the support of the bill coming from large corporations.

Mr. ANGOFF. I wasn't seeking to characterize it like that, Mr. Chairman.

If there were a way, and maybe there is a way, to benefit small- and medium-sized companies without giving what very well could be blanket immunity from the antitrust laws to larger corporations, I think that should be considered.

But what this legislation does is give the same antitrust immunity to both the small companies, the medium-sized companies, and the large companies.

It gives benefits to people who don't need them. I do not disagree for a moment that small- and medium-sized companies in a different position from large companies. I just think we are being a little overinclusive.

In my view, the harms of the certification procedure outweigh the benefits.

Mr. BONKER. We can proceed on that point a little later. I will call on Mr. Bingham now.

Mr. BINGHAM. Thank you, Chairman Bonker.

DOMESTIC ANTITRUST VIOLATIONS

Mr. Angoff, how do you visualize the activities that might be permitted under the antitrust provisions of this bill as having an impact on domestic practices? In other words, as leading to, in effect, violations of the antitrust laws domestically.

Mr. **Angoff**. I would be glad to, Mr. Chairman. Let's take peanuts, for example.

Under the bill, associations of peanut producers would be able to get together and fix one price for peanuts to the rest of the world.

Now, Commerce would not certify these associations in the first instance unless it was convinced that they were only going to fix the price of peanuts for the rest of the world, not for the United States. But if, after Commerce issued its certification, it happened that they did begin fixing prices, not only abroad, but at home too, under my reading of the legislation, private parties, small businessmen, peanut growers who were not in the association, who were injured by that price-fixing, could not sue.

Mrs. **Fenwick**. Wait a minute. I didn't get that.

Mr. **Shamansky**. Can you cite the language? It is your interpretation and this lawyer is concerned about what you are reading. I am not antagonistic. I just don't see it. I want you to show me how you get that. I don't think that is the intention of the legislation.

Mr. **Angoff**. On page 27—it may not be the intention of the legislation.

My reading of it is that it does exactly that.

On page 27, the first full sentence, which begins "the subsequent revocation or invalidation of such certificate shall not render the association or its members or an export trading company or its members liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period."

Mrs. **Fenwick**. What lines are you reading?

Mr. **Angoff**. The first——

Mr. **Bonker**. Excuse me. Mr. Bingham has the time. He should yield.

Mr. **Bingham**. I yield to the gentleman from Ohio.

Mr. **Shamansky**. If the language were added "engaged in overseas," beyond the boundaries?

Mr. **Angoff**. Certainly. If there were a proviso inserted, the thrust of which was that if these activities spilled over into the United States, then private small businessmen, consumers, State and local governments could sue, certainly that would improve it.

On the other hand, that is what existing law is—it would give them no more protection than what they already have.

Mr. **Bonker**. If the gentleman would yield, it seems the administration has testified on this point and assured the committee that that is not the effect of the language, that the price fixing, if you will, is only in the context that is authorized by the certification procedure.

It is extended only in extraterritorial circumstances and could not extend to domestic.

If it did, it would be subject to the regular antitrust provisions.

Mr. **Angoff**. If that is the case, Mr. Chairman, there is going to be quite a bit of litigation under this bill. As a plaintiff's lawyer, I would argue—just as you did—what I just did.

As a defense lawyer, I would argue that Commerce certainly would never certify it and this bill couldn't possibly mean they were certifying activities that would violate the antitrust laws at home.

Mr. **Bonker**. Mr. Angoff, the whole thrust of the bill is to remove the uncertainty, not add to it.

Mrs. **Fenwick**. Would the gentleman yield? I am confused.

I am probably slow on this. Aren't you quoting from 734, not 1799?

Mr. **Angoff**. This is H.R. 1799, page 27, the first full sentence. Identical language appears in H.R. 1648 and S. 34.

Mrs. **Fenwick**. What line?

Mr. **Angoff**. 1799, the sixth line down, starting with the word "The."

Mrs. **Fenwick**. Maybe we have different copies of the bill.

You are starting at line 25 on page 27, are you?

Mr. **Angoff**. No. I am on page 27, line 6.

I am on page 27, line 6, the last word.

Mr. **Bingham**. If I might reclaim my time for a moment, I think it should be pointed out at this time that this bill has been referred to a number of committees, including the Committee on the Judiciary, and the antitrust provisions will be primarily the responsibility of the committee on the Judiciary, not this committee.

It is certainly of interest to us. Similarly, the DISC provisions are primarily the responsibility of the Ways and Means Committee. The provisions which you did not dwell on with regard to the permissible activities of banks, primarily are the responsibility of the banking committee, so that I think we just ought to bear that in mind before we devote too much attention to provisions that really are not within the jurisdiction of this committee.

Thank you, Mr. Chairman.

Mr. **Bonker**. Mr. Angoff, I think it is important that you raised these points. We will be accountable for provisions that we pass out of this committee. As Mr. Bingham points out, the real specialists on antitrust laws are in Judiciary. They will be addressing this issue.

Mr. Shamansky.

Mr. **Shamansky**. Thank you, Mr. Chairman.

I want to say to Mr. Angoff that I was willing to use the memorandum based on your analysis, and this member of the subcommittee is not anxious to exempt anybody from domestic violations.

I don't think that was the intention of the drafters of the legislation.

Mr. **Angoff**. I am sure it was not.

Mr. **Shamansky**. I will certainly work to clear up that ambiguity which you perceive.

I don't think that is the intention of the legislation. To that extent, your raising the question may make everybody a lot happier and it would be a very positive contribution to the ultimate drafting of the bill.

I am assuming from Mr. Poole and Mr. Freeman that that isn't your intention here, to acquire a back-door exemption from violations of antitrust law.

Mr. **Poole**. I certainly concur with that, Mr. Shamansky.

I believe the language as it is currently drafted, though, specifically says there will not be a liability under the antitrust laws for such export trade or export trade activities; and it does not say anything at all about a violation under the laws for domestic activities and impact upon the domestic markets.

I believe that the language is not ambiguous.

Mr. **Shamansky**. Clarifying language which may not be clarifying, but language being of that nature, certainly I think that is the fair intent of the legislation.

That is just my own personal observation.

Thank you, Mr. Chairman.

Mr. **Bingham**. Mrs. Fenwick.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

PRICE FIXING

I would like to go back to the peanuts. You speak of the American producers of peanuts as being able to get together, all of them supposedly, because if there were some left out, of course, then that wouldn't work in fixing the world price.

But what do we say about what the British call the ground nut schemes? We are not the sole producers of peanuts. In England they are called ground nuts. They promote them all over different parts of Africa, and as you know, the British investors have invested and those companies produce them.

How could—even if we got every single producer of peanuts in the United States—how could they fix a world price which would then be reflected at home? How does that follow?

For instance, look what is happening with butter. There is a world price of butter. Does that affect what is happening here?

Certainly not. We have a butter price; they say it is $1.50; it isn't. It is $2.85 a pound. The world price is something like 85 cents. What happens here does not—the world prices do not always reflect——

Mr. **Angoff**. Certainly they do not always reflect that.

My concern is that under H.R. 1799, H.R. 1648, and S. 734 as passed by the Senate, the methods of operations of certified associations are exempt from the antitrust laws.

My concern is that when such a method of operation, for example, would be—let's not use the word "price fixing," but they would set—and we don't have to have all the peanut producers, but a number of peanut producers would get together and decide they were going to charge one price, not in the United States, but——

Mrs. **Fenwick**. Mr. Angoff, yes, they decide. Suppose they decide they are in competition with other foreign producers of peanuts. They can't fix any world price. That is what you said.

Mr. **Angoff**. If I said that, I misspoke. They cannot—certainly they cannot fix a world price that everyone is going to adhere to.

What they can do is agree among themselves, that is the American peanut producers, or some of them can agree among themselves that they will charge this one price to customer the rest of the world.

Mrs. **Fenwick**. What is the matter with that?

Mr. **Angoff**. For arguments' sake, let's say nothing is the matter with that. My fear is that something could happen with which there is something the matter.

That is that they would all decide to charge the same price to American customers, in American markets.

Mrs. **Fenwick**. Then they would come under the antitrust. It is perfectly clear in the law. I was following on what Mr. Bingham said.

Let's follow this down and see what will happen that will have such a damaging effect. Even in the peanut world, I don't see it will have that. You couldn't possibly control what the people who chose not to join, whether foreign or domestic, chose to sell their peanuts for.

Mr. **Angoff**. If I could get back, though, to what you said about it being—it would be against the law for companies to set the price in America under my interpretation of the legislation, it would not be.

The language, "methods of operation engaged in during such period," exempts such getting together and fixing the price at home.

Other people may disagree, but I think the antitrust division and the FTC, and other antitrust lawyers would probably agree.

I guess my only point is that this is a complicated piece of legislation; there are many different provisions.

Mrs. **Fenwick**. If those words were taken out and you just kept to the rather straightforward "export trade, export trade activities," then that would be perfectly alright?

Mr. **Angoff**. It would be better. It wouldn't be perfectly OK. There is still some ambiguity about what happens if these export trade activities somehow spill over.

Mrs. **Fenwick**. How? That is what I am trying to find out.

Mr. **Angoff**. In meetings in which they discussed the export trade activities, they can also discuss what they might do at home.

Taking methods of operation out would be a big improvement; a bigger improvement would be adding a proviso the thrust of which would be that no immunized association will do anything that would restrain commerce in the United States.

With such a proviso, that would be a big, big improvement.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

Mr. **Bonker**. Mr. Gilman.

Mr. **Gilman**. Thank you, Mr. Chairman.

DOMESTIC IMPLICATIONS

Mr. Angoff, I am too troubled about this extra territorial effect. It was my impression that the legislation would only protect a company for liability for extraterritorial activities and not for domestic activities.

Can you pinpoint a little more why you feel it would apply to domestic operations?

Mr. ANGOFF. Yes, because of the word methods of operations. The methods of operation——

Mr. GILMAN. What are you referring to now?

Mr. ANGOFF. That is on page 27, line 10 and 11. This is H.R. 1799.

Mr. GILMAN. Under 1799 that applies to when there is a revocation or an invalidation of the certificate?

Mr. ANGOFF. That is right. The bill wisely provides that Commerce can revoke certification if the immunized associations begin to restrain trade in the United States, but then in the sentence beginning on line 6 and ending on line 11, it provides that even if Congress does revoke its certification, private parties cannot sue, and it is my interpretation that they cannot sue not only for activities that took place overseas, but also for activities which would fall under the words "methods of operations" that took place in this country.

Mr. GILMAN. The administration, I understand, has testified that certification will only protect for liability for extraterritorial activities and the effects of those activities, but not from any domestic effects.

Where do you derive your definition that it is going to apply to domestic activities?

Mrs. Fenwick is pointing out that on page 16 of that bill, line 6 through 12, it specifically refers to "methods of operation of such export trading company" that are not in restraint of trade within the United States.

Mr. ANGOFF. That is correct. Those are some of the criteria that firms would have to meet in order to be immunized in the first place. That is correct.

But on page 27 again it says Commerce could revoke it if they no longer did meet those.

Mr. GILMAN. There is protection to bring suit for any domestic problem. Once the certification has been taken away, they are certainly open to lawsuit for any domestic violations.

What I am saying is, we have not immunized them by the statute for domestic violations.

Mr. ANGOFF. Mr. Gilman, if I were a plantiff's lawyer, I would make exactly that argument.

Mr. GILMAN. Where is the opposite view? I don't see any basis for it in the statute.

Did you want to comment?

Mr. POOLE. If I could, I would certainly appreciate the opportunity of responding. Advising on this on a daily basis, I can tell you exactly what is his concern and what I think is the answer to that.

No. 1, his concern is that a group of peanut exporters are going to get together and they are going to say OK, we are going to sell peanuts everywhere outside of the United States for 10 cents a pound.

Then by implication, virtually, first of all whenever these groups of people get together, they are going to have antitrust lawyers, 20 of them, sitting there saying, "Don't say that, don't say that, say that."

That is an unfortunate circumstance facing businessmen these days.

By saying we are going to sell peanuts for 10 cents a pound everywhere outside the United States, they are going to say we will sell them for that in the United States too. Therefore they are setting a domestic price.

The fact of the matter is that if they do set a domestic price, it is in violation of U.S. antitrust laws.

That is a claim which is available to individuals or any company.

Mr. **Gilman**. The question is, do we cloak them with any immunity?

Mr. **Poole**. It is my view that you do not because of the fact that the existing impact which is a detrimental impact in U.S. commerce is still within the context of U.S. commerce, and subject to the domestic provisions of U.S. antitrust laws.

In addition, it is my view that if in fact there is such a price set and that it is a nonmarket price, and it is an arbitrary price, that members of that group who are well advised—and most of them will be—will realize that they do not have to stick to that price; and if it is 10 cents a pound, but they can sell them for 8 cents a pound in the United States then in a free market economy it will cause somebody to split off from the group and sell them at 8 cents a pound.

That is what will happen from a practical viewpoint. All you need to do in this legislation is insert "methods of export" in front of the word "operation" and you have the problem cured.

Mr. **Gilman**. Do you agree with that?

Mr. **Angoff**. If I were representing the defendant, I would make Mr. Poole's argument. Do I think the problem would be cured?

No; I think it would be an improvement, but I think in order to cure it a specific proviso should be put in, the thrust of which should be that no anticompetitive effect in the United States would be exempted from suit.

Mr. **Gilman**. I think the legislation certainly intends to do that. I don't think we would have any objection to that kind of language. Would that satisfy your objection?

Mr. **Angoff**. In that area, yes. It would.

Mr. **Gilman**. I don't see that we have any problem with any of that. We probably could make that quite clear. I think the language as it stands probably does that, but I think we can, certainly, spell that out, so that we wouldn't be confronted with that kind of litigation.

Mr. **Angoff**. I think that would clear up a lot of the uncertainty.

DEGREE OF BANKING INTEREST

Mr. **Gilman**. You mentioned the larger corporations. When this measure was first proposed, I was concerned about the banking industry reaching into foreign trade and whether there was going to be a restraint of trade and discussed this with some of the people in the larger banks.

Frankly, they are not interested in the legislation and could care less about it. I think if anything you are going to have to induce some of the smaller banks to get involved in this area. Apparently, it isn't too remunerative and not the kind of thing they are anxious to become involved in.

I was concerned that maybe we were opening the door for that kind of a restraint. However, more than opening the door for restraint, I think we are going to have to find some ways to provide incentives to get them involved in this kind of relationship.

Mr. **Angoff**. Mr. Gilman, I think the people on the Banking Committee are concerned about large banks influencing this legislation.

Mr. **Gilman**. They are not interested, apparently.

In some survey, and I admit it wasn't widespread, but I tried to do a survey of some of the larger banking interests to get their comments about the legislation.

I found very little interest in the legislation and very little interest in this kind of business by the larger banks. I just pass that on by way of a comment.

[Discussion off the record.]

FOREIGN POLICY IMPLICATIONS

Mr. **Bonker**. Mr. Angoff, you made an extraordinary statement on page 9. It is under the section of foreign policy implications of export trading company legislation.

You state, "Since the Reciprocal Trade Act of 1934, the U.S. has been a leader in opening up world trade by removing governmental restraints. After World War II, we encouraged the creation of antitrust laws in Germany and Japan, decartelized their industries, and initiated antitrust prosecution of the major international cartels remaining after the war. We continued to try to influence other nations toward procompetitive, free market principles."

I imagine we were more successful than we ever imagined or ever wanted to be in revitalizing the Japanese and German economies.

What is extraordinary is that many people agree that one reason why Japan and these other Pacific rim countries have been so tremendously successful on the world market is because they have trading companies.

Mr. **Angoff**. That is one view, Mr. Chairman.

Another view, though, held by the Wall Street Journal as well as Bob Reich, the former Director of Policy Planning at the FTC, F. M. Scherer at Northwestern University and a number of others, is that export trading companies have nothing to do with Japanese successes. It is the management styles, the techniques.

One example I could cite—I will cite—is the example of the auto industries. In our auto industry there are only three firms and some people say one reason that we haven't done so well lately is not because of too stringent antitrust enforcement, but because of not enough antitrust enforcement.

Whereas the Japanese have seven large firms, none of whom export through export trading companies. At the moment——

Mr. **Bonker**. That is why I don't think the comment is very relevant. They don't use export trading companies.

Mr. **Angoff**. That is right. The Japanese in the auto industry do not export through export trading companies.

That would seem to indicate that export trading companies in themselves are not the answer.

Mr. **Bonker**. You go on to say, "export trading company legislation—which would expressly seek to foster export cartels—would therefore be an embarrassment to the U.S."

How on earth could the creation of trading companies, which is only an effort to emulate what Pacific rim countries and European countries have been doing all along, how on earth would allowing the formation of trading companies embarrass the United States?

Mr. **Angoff**. Just in this way: The United States has—and I think rightly so—always pushed for free trade, for more antitrust enforcement, at international antitrust conferences, has encouraged other countries to set up their own antitrust laws.

Mr. **Bonker**. Then if we are going to subscribe to this principle, then we should advocate that the Japanese and others dismantle their trading companies, so that we have a true Stockmanlike, purist economic policy.

Mr. **Angoff**. Before you said the word "Stockman"——

Mr. **Bonker**. I am glad to see Nader and Stockman forces are finally combining.

Mr. **Angoff**. Before you said the word "Stockman," I was going to say there would be something to that. It is just very difficult to do.

Certainly, there are restraints of trade throughout the world. There is no question about that. They should be eliminated. Nobody likes the OPEC cartel. We can't do anything within our antitrust laws about that, but I don't think that that means that we should set up cartels of our own.

Mr. **Bonker**. I really take issue with your description of the trade company as a cartel.

You know, I could see three or four large corporations getting together to dominate an industry, but I think in the context of this discussion and the witnesses that we have had have all been testifying really in favor of the small guy trying to compete more effectively on the world market.

Mr. **Angoff**. We are all in favor of the small guy trying to compete more effectively, both in the world market and at home.

It is my judgment that there are serious problems with this legislation and that the harms may outweigh the benefits.

Mr. **Bonker**. Any further questions, comments, from committee members?

I want to thank each of the witnesses for their appearance today, for your statements.

The committee does appreciate the recommendations that have been made.

Mr. Angoff, you may have raised a legitimate point.

As Mr. Gilman says, the committee has no serious objection. We will try to clarify the language so our intent is clear.

Thank you very much for your testimony.

The subcommittee stands adjourned.

[Whereupon, at 12 noon the subcommittee adjourned, to reconvene at the call of the Chair.]

THE EXPORT TRADING COMPANY ACT OF 1982

MONDAY, MARCH 29, 1982

House of Representatives,
Committee on Foreign Affairs,
Subcommittee on International
Economic Policy and Trade,
Washington, D.C.

The subcommittee met in open markup session at 2:10 p.m. in room 2200, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. **Bingham**. The Subcommittee on International Economic Policy and Trade will come to order.

We meet today for the markup of export trading company legislation, specifically H.R. 1799, introduced by the gentleman from Washington, Mr. Bonker, and cosponsored by a number of other Members.

At this time, I recognize the gentleman from Washington for an opening statement that he may wish to make.

Mr. **Bonker**. Mr. Chairman, I want to commend you, not only for scheduling the hearings and this markup session, but for your patience in dealing with this particular issue over the course of the last 2½ years.

Through your leadership, the subcommittee has demonstrated a great deal of restraint in allowing other committees in the Congress who have jurisdiction over various provisions of the bill sufficient time to consider and act on those provisions. In fact, by an amendment that you will be offering today, we will incorporate the concerns of one of those committees.

IMPORTANCE AS INTERNATIONAL TRADE ISSUE

This legislation is deemed vital by a number of organizations and by the leadership in both political parties.

It has passed the Senate on two occasions without a dissenting vote. More and more people are beginning to realize and appreciate the importance of international trade and that we will not have full economic recovery at home unless we realize our potential on the world market.

There is growing consensus that we must make it possible for small- and medium-sized companies to participate in that world market.

Indeed, the Commerce Department has identified at least 20,000 small manufacturing firms who have the capability and potential of participating in international trade. Yet, they lack the necessary means to achieve that potential.

More and more people are beginning to appreciate this legislation that would allow the formation of export trading companies, that would, in turn, make it possible for small- and medium-sized companies to have their share of the world market.

It is probably one of the most important international trade issues to come before the Congress in this session.

I am pleased to have been part of the drafting of this bill and to have had the opportunity to work closely with you, Mr. Chairman, with your staff, and with other distinguished colleagues on this committee.

I only hope that the other committees which have jurisdiction over various titles of the bill will sense our urgency and will seize the opportunity to act favorably on their particular section, so that the House can pass out a bill sometime within the next few months.

Mr. BINGHAM. I thank the gentleman from Washington for his comments. I do hope that when and if this bill becomes law, the heroic work of the gentleman in support of it will be recognized by the export community.

The gentleman from Ohio.

Mr. SHAMANSKY. Thank you, Mr. Chairman.

DOMESTIC ANTITRUST CLARIFICATION

Mr. Chairman, as a cosponsor of H.R. 1799, I am a strong supporter of the intent of the bill. I believe we must work to improve our export trade.

The Export Trading Act is an important contribution to that effort. I am hesitant, however, to support title II of the bill as it now stands.

Title II contains the antitrust provisions of the bill and makes substantial changes in American antitrust law. It would establish a procedure whereby export trading companies or associations could be given a certificate of immunity from all antitrust process, both Government process and civil suit, for their activities outside of the United States.

I want there to be no confusion about the effect the certification procedure would have on antitrust activity domestically.

An export trading company that qualifies for a certificate should not engage in anticompetitive activity within the United States without being subject to the same antitrust laws as other companies within the United States.

In testimony before this subcommittee on May 20, 1981, Secretary of Commerce, Malcolm Baldrige, stated that he believed this legislation would not protect export trading companies from damages for domestic antitrust violations.

Sherman Unger, General Counsel of the Department of Commerce, concurred. At the appropriate time, Mr. Chairman, I intend to introduce an amendment to title II.

My amendment will clarify that antitrust laws still apply to activity within the United States. With this clarification of the antitrust provision of H.R. 1799, I will feel able to give my full support to the Export Trading Act.

Thank you, Mr. Chairman.

Mr. **Bingham**. The gentleman from Michigan.

Mr. **Wolpe**. Mr. Chairman, I will wait, but thank you.

Mr. **Bingham**. Very well, the Chair notes the presence of a quorum for purposes of markup, and unless there is objection, we will proceed now to the markup of H.R. 1799.

Mr. **Wolpe**. I don't think we have a quorum.

Mr. **Bingham**. One-third for markup.

Mr. **Bonker**. For a markup, yes, one-third.

Mr. **Bingham**. The clerk will read.

Mr. **Majak** [reading]:

> H.R. 1799, titled "The Export Trading Company Act of 1981." Be it enacted by the Senate and the House of Representatives of the United States of America and Congress assembled, section 1, this Act may be cited as the Export Trading Company Act of 19——

Mr. **Bonker**. Mr. Chairman, I move that the reading of the bill be dispensed with and that we proceed for consideration and amendment at any point.

Mr. **Bingham**. Is there objection?

[No response.]

Mr. **Bingham**. Hearing none, it is so ordered.

[The text of H.R. 1799 follows:]

97TH CONGRESS
1ST SESSION

H. R. 1799

Entitled: "The Export Trading Company Act of 1981".

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1981

Mr. BONKER (for himself and Mr. BINGHAM) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means

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A BILL

Entitled: "The Export Trading Company Act of 1981".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as "The Export Trading Company Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one

out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitable, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Goverment regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers, in particular by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations and export trading companies, by making the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States, or services produced in the United States, which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, not more than 50 percent of the fair market value (as determined under regulations issued by the Secretary) of which is attributable to articles imported into the United States;

(3) the term "services produced in the United States" includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and trans-

portation services, not less than 50 percent of the fair market value (as determined under regulations issued by the Secretary) of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods produced in the United States or services produced in the United States;

(5) the term "export trading company" means a company which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods produced in the United States or services produced in the United States; and

(B) facilitating the exportation of goods produced in the United States and services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(8) the term "Secretary" means the Secretary of Commerce; and

(9) the term "company" means any person or any corporation, partnership, association, or similar organization.

(b) The Secretary may by regulation further define any term defined in subsection (a), in order to carry out the purposes of this Act.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 4. The Secretary shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE I—EXPORT TRADING COMPANIES

INVESTMENT IN EXPORT TRADING COMPANIES BY BANKING ORGANIZATIONS

SEC. 101. (a) For purposes of this section—

(1) the term "banking organization" means any State member bank, State nonmember insured bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State (other than the District of Columbia);

(3) the term "District bank" means any bank (except a national bank) which is operating under the Code of Law for the District of Columbia;

(4) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(5) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(6) the term "bankers' bank" means any bank which (A) is organized solely to do business with other financial institutions, (B) is owned primarily by the financial institutions with which it does business, and (C) does not do business with the general public;

(7) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(8) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(9) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(10) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank;

(11) the term "capital and surplus" means paid in an unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency considers appropriate;

(12) an "affiliate" of a bank organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(13) the term "subsidiary" means, with respect to any banking organization—

(A) any company 25 percent or more of whose voting shares (excluding shares owned by the United States) are directly or indirectly owned or controlled by such banking organization or are held by it with power to vote;

(B) any company the election of a majority of whose directors is controlled in any manner by such banking organization; or

(C) any company with respect to the management or policies of which such banking organization has the power, directly or indirectly, to exercise a controlling influence, as determined by the appropriate Federal banking agency, after notice and opportunity for a hearing;

(14) a banking organization has control over any company if—

(A) the banking organization directly or indirectly or acting through one or more other person owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company;

(B) the banking organization controls in any manner the election of a majority of the directors or trustees of the company; or

(C) the appropriate Federal banking agency determines, after notice and opportunity for a hearing, that the banking organization directly or indirectly exercises a controlling influence over the management or policies cf the company; and

(15) the term "export trading company" has the same meaning as in section 3(5) of this Act, and means any company organized and operating principally for the purpose of providing export trade services, as defined in section 3(4) of this Act.

(b)(1) Notwithstanding any other provision of law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly up to 5 percent, in the aggregate, of its consolidated capital and surplus (or, in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking, 25 percent) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make an investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 percent of the voting stock or other evidences of ownership of an export trading company to be owned or controlled by banking organizations, only if the banking organization making such investments or taking such action notifies the appropriate Federal banking agency of such investments or action and only if that banking organization receives the prior approval of the appropriate Federal banking agency for such investments or action.

(2) Any banking organization which makes an investment under paragraph (1)(A) shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, the appropriate Federal banking organization may disapprove the investment or impose conditions on such investment under subsection (d). The appropriate Federal banking agency may also require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within the 90-day period which begins on the date the application is received by the appropriate Federal banking agency, the application shall be deemed to have been granted.

(4) Before—

(A) a banking organization makes any investment in an export trading company subsidiary other than an investment for which notification has been made pursuant to paragraph (1)(B), or

(B) an export trading company subsidiary of a banking organization engages in any activity, including the taking of title of goods or commodities, which was not disclosed in any prior application for approval under this section,

the banking organization shall notify the appropriate Federal banking agency. The banking organization may make the investment described in subparagraph (A), or the export trading company subsidiary may engage in the activity described in subparagraph (B), as the case may be—

(i) at the end of the 60-day period beginning on the date on which the appropriate Federal banking agency receives the notification required by this paragraph, if such agency fails either to disapprove or to impose conditions on such investment or activity,

(ii) subject to any conditions imposed by such agency on such investment or activity during such 60-day period, or

(iii) before the end of such 60-day period, if such agency notifies the banking organization in writing of its intent not to disapprove or impose conditions on the investment or activity.

During such 60-day period, the appropriate Federal banking agency may disapprove the proposed investment or activity or impose conditions on such investment or activity under subsection (d).

(5) In any case in which a banking organization makes an investment, or an export trading company subsidiary of a banking organization engages in an activity, of which notification to, or approval by, the appropriate Federal banking agency is required by this subsection, and that banking organization is a subsidiary of another banking organization which is subject to the jurisdiction of another appropriate Federal banking agency, such notification or approval need only be made to or obtained from the appropriate Federal banking agency for the banking organization which makes the investment or whose export trading company engages in the activity.

(c)(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company, combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 percent of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts other than those necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) This subsection applies to investment or actions described in subsection (b)(1)(B), any investment described in subsection (b)(1)(A) in an export trading company which the appropriate Federal banking organization determines is a subsidiary of the banking organization making the investment, and any investment or activity described in subparagraph (A) or (B) of subsection (b)(4).

(2) Before the appropriate Federal banking agency exercises the authority of this subsection to approve, disapprove, or impose conditions on a proposed investment, action, or activity, such agency shall transmit a copy of such proposal to the Secretary of Commerce. The Secretary, not later than 30 days after the date on which such proposal is so transmitted, may present to such agency the views of the Department of Commerce on the proposal. In weighing the export related benefits of such proposal, the appropriate Federal banking agency shall consider any views of the Department of Commerce submitted under this paragraph.

(3) In the case of every investment, action, or activity to which this subsection applies, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to

improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any proposed investment, action, or activity to which this subsection applies if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the proposal. Any disapproval order issued under this section shall contain a statement of the reasons for such disapproval.

(4) In approving any investment, action, or activity to which this subsection applies, the appropriate Federal banking agency may impose such conditions which, under the circumstances of the particular case, it considers necessary (A) to limit a banking organization's financial exposure to an export trading company or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods or commodities, or the holding of title to inventory, by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies shall issue regulations which establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. Such standards should be established not later than 270 days after the date of enactment of this Act. If an export trading company subsidiary of a banking organization pro-

poses to take title to goods or commodities, or to hold title to inventory, in a manner which does not conform to such standards, or prior to the establishment of such standards, it may only do so with the prior approval of the appropriate Federal banking agency and subject to such conditions and limitations as such agency may impose under this paragraph.

(5) In determining whether to impose any condition under paragrah (4), the appropriate Federal banking agency shall consider the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title to goods or commodities, or the holding of title to inventory, which conditions or standards unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 2 of this Act. In setting standards under paragraph (4) for the taking of title to goods or commodities or the holding of title to inventory, the appropriate Federal banking agencies shall give special weight to the need to take such title in certain kinds of trade tranactions such as international barter transactions.

(6) Notwithstanding any other provision of this Act, if the appropriate Federal banking agency has reasonable cause to believe that the ownership or control by a banking organization of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act, such agency may order the banking organization, after notice and opportunity for a hearing, to terminate (within 120 days or such longer period as such agency may direct in unusual circumstances) its investment in the export trading company.

(7) Not later than two years after the date of enactment of this Act, the appropriate Federal banking agencies shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report, prepared jointly by such agencies, on the implementation of this section. Such report shall contain the recommendations of such agencies with respect to the implementation of this section, any changes in United States law they recommend to facilitate the financing of United States exports, especially exports by small and medium-sized business concerns, and the recommendations of such agencies on the effects of ownership of United States banks by foreign banking

organizations affiliated with trading companies doing business in the United States.

(e) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals for any circuit in which such organization has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing a notice of appeal in such court within 30 days after the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights; or (D) without observance of procedure required by law. Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate

Federal banking agency shall, within 60 days after the date of issuance of the court's order, correct any such procedural error or, in the case of a substantive error, reconsider its prior order. If the agency fails to act within such 60-day period, the application or other matter which was the subject of the review shall be deemed to have been granted as a matter of law.

(f)(1) Each appropriate Federal banking agency may issue such regulations and orders, require such reports, delegate such functions, and conduct such examinations of subsidiary export trading companies, as such agency considers necessary to carry out the provisions of this section.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 102. (a) The Economic Development Administration and the Small Business Administration shall, in considering applications by export trading companies for loans and guarantees, including applications to make new investments related to the export of goods produced in the United States or services produced in the United States and to meet operating expenses, give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small or medium-sized businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated to carry out this section $20,000,000 for each of the fiscal years 1982, 1983, 1984, and 1985. Amounts appropriated under this subsection shall be in addition to amounts appropriated under any other provision of law.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 103. The Export-Import Bank of the United States shall provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 3(5) of this Act, or to other exports, when such loans are secured by export accounts receivable or inventories or exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

Guarantees provided under this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—ANTITRUST PROVISIONS

DEFINITIONS

SEC. 201. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods or services exported, or in the course of being exported, from the United States to any other country.

"(2) SERVICE.—The term 'service' means the provision, for a charge, of useful labor that does not produce a tangible commodity, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities and agreements made in the course of export trade.

"(4) STATE.—The term 'State' includes the District of Columbia.

"(5) UNITED STATES.—The term 'United States' means the States and the territories and possessions of the United States.

"(6) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' means trade or commerce within any territory or possession of the United States or between or among the States and territories and possessions of the United States.

"(7) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(8) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of two or more persons (A) who are citizens of the United States, or (B) which are partnerships or corporations created and existing under the laws of any State or of the United States.

"(9) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 3(5) of the Export Trading Company Act of 1980.

"(10) ANTITRUST LAWS.—The term 'antitrust laws' means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11); and the Clayton Act (15 U.S.C. 12 et seq.);

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(12) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(13) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 202. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—Any association entered into for the sole purpose of engaging in export trade and actually engaged or proposed to be engaged solely in such export trade and the export trade activities and methods of operation of such association, and the export trade, export trade activities, and methods of operation of any export trading company, shall, when such association or export trading company is certified in accordance with the procedures set forth in this Act, be eligible for the exemption provided in subsection (b), if—

"(1) such association or its export trade, export trade activities, or methods of operation, or the export trade, export trade activities, or methods of operation of such export trading company are not in restraint of trade within the United States and are not in restraint of the export trade of any domestic competitor of such association or export trading company; and

"(2) such association or export trading company does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of goods or services of the class exported by such association or export trading company, or which substantially lessens competition within the United States or otherwise restrains trade in the United States.

"(b) EXEMPTION.—An association or export trading company and the members of such association or export trading company are exempt from the operation of the antitrust laws with respect to the export trade, export trade activities, or methods of operation of such association or export trading company that are specified in a certificate issued in accordance with the procedures set forth in this Act and that are carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and are engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation of such certificate shall not render the association or its members or an export trading company or its members liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.".

TECHNICAL AMENDMENT

SEC. 203. (a) The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.".

(b) Section 3 of such Act is amended by striking out "SEC. 3. That nothing" and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 204. (a) Section 6 of the Webb-Pomerene Act (15 U.S.C. 66) is amended—

(1) by striking out "SEC. 6."; and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE.".

(b) The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws of the association or export trading company, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods and services which the association or export trading company or the members of the association or export trading company export or propose to export.

"(6) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(7) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and the effects of the association or export trading company on competition or potential competition. The Secretary may request such information as part of an initial application for certification or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making the application or which is not necessary for certification of the association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within 90 days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and its export trade, export trade activities, and methods of operation, or the export trading company and its export trade, export trade activities, and methods of operation, meet the requirements of section 2 of this Act. The certificate shall specify the permissible export trade, export trade activities, and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary considers necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that the Secretary proposes to issue under this section.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities of an association or export trading company, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of an association or export trading company which have a significant impact on its export trade, make the 90-day period for approval of an application provided in paragraph (1) of this subsection, or for approval of an application for an amendment provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and the Secretary may grant expedited action on the application.

"(3) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application under this section for certification or for amendment of a certificate, the Secretary shall—

"(A) notify the association or export trading company of that determination and the reasons for the determination, and

"(B) upon the request of the association or export trading company, afford the association or export trading company an opportunity for a hearing with respect to that determination, in accordance with sections 556 and 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation of an association or export trading company to which a certificate has been issued under this section, the association or export trading company shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filled within 30 days after a material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the certificate is in effect.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—After notifying the association or export trading company involved and after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, the Secretary—

"(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certificate, or

"(2) shall, upon a determination that the export trade, export trade activities, or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments as may be necessary to satisfy the requirements of such section.

"(e) ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) COURT ACTION.—The Attorney General or the Commission may bring an action in an appropriate United States district court against an association or its members or an export trading company or its members to invalidate, in whole or in part, a certificate issued under this section to the association or export trading company on the ground that the export trade, export trade activities, or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. The Attorney General or Commission may not file such action until 30 days after notifying the association or export trading company or members concerned of the intent to file the action. The court shall consider de novo any issues presented in any such action. If the court finds that any requirement of section 2 is not met, the court shall issue an order declaring the certificate, in whole or in part, invalid and may issue any other order necessary to meet the requirements of section 2 and to carry out the purposes of this Act. Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code.

"(2) STANDING.—No person other than the Attorney General or Commission shall have standing to bring an action against an association or its members or an export trading company or its members for failure of the association or export trading company or the export trade, export trade activities, or methods of operation of the association or export trading company to meet the requirements of section 2 of this Act.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within 90 days after the date of enactment of the Export Trading Company Act of 1981, the Secretary, after consultation with the Attorney General and the Commission, shall publish proposed guidelines for determining whether export trade, export trade activities, and methods of operation of an association or export trading company meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—After publishing proposed guidelines pursuant to subsection (a), and any proposed revision of such guidelines, interested parties shall have 30 days to comment on the proposed guidelines or proposed revision. The Secretary shall review any such comments received and, after consultation with the Attorney General and the Commission, shall publish final guidelines within 30 days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines pursuant to subsection (b), the Secretary shall periodically review the guidelines and, after consultation with the Attorney General and the Commission, shall, in accordance with the procedures in this section, make any necessary revisions in the guidelines.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rule making for purposes of subchapter II of chapter 5 of title 5, United States Code.

"SEC. 6. ANNUAL REPORTS.

"Every association or export trading company to which a certificate is issued under section 4 of this Act shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, which shall include any changes in the information required by section 4(a) of this Act.

"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications for certification and amendments thereto and reports of material changes, filed under section 4 of this Act, and annual reports submitted under section 6 of this Act, that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—The Secretary shall make available applications for certification and for amendments thereto and reports of material changes, filed under section 4 of this Act, and annual reports submitted pursuant to section 6 of this Act, or any information derived from such applications or reports, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. The Secretary may disclose any such document or information only upon a prior certification by the recipient of the document or information that the document or information will be maintained in confidence and will only be used for such official law enforcement purposes.

"(c) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the Congress, and any information obtained under this Act shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

"SEC. 8. INTERNATIONAL OBLIGATIONS.

"The Secretary may require any association or export trading company certified under this Act to modify its operations so as to be consistent with any international obligation which the United States assumes by treaty or statute.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall issue such regulations as may be necessary to carry out the purposes of this Act.

"SEC. 10. TASK FORCE STUDY.

"Five years after the date of enactment of the Export Trading Company Act of 1980, the President shall appoint a task force to study the effect of the operation of this Act on domestic competition and on the trade deficit of the United States and to recommend either continuation, revision, or termination of this Act. Such task force shall, within one year after its appointment, complete such study and submit such recommendations to the President.".

CONTINUING EXEMPTION FOR EXISTING ASSOCIATIONS; AUTOMATIC CERTIFICATION

SEC. 205. (a) Application of the antitrust laws to (1) any association which is engaged solely in export trade and which is in compliance with section 5 of the Webb-Pomerene Act as in effect immediately before the date of enactment of this Act, and (2) the export trade, export trade activities, and methods of operation of such association, shall continue to be governed by the provisions of the Webb-Pomerene Act as in effect immediately before the date of enactment of this Act, except that in lieu of filing the written statements with the Federal Trade Commission required by section 5 of the Webb-Pomerene Act as in effect immediately before the date of this Act, such association shall submit annual reports to the Secretary of Commerce pursuant to section 6 of the Webb-Pomerene Act, as amended by this Act.

(b) Any association to which subsection (a) applies shall be deemed to be certified, as of the date of enactment of this Act, under section 4 of the Webb-Pomerene Act, as amended by this Act, if such association, within 180 days after such date of enactment, files an application for certification with the Secretary of Commerce containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by this Act.

(c) For purposes of this section, the terms "association", "export trade", and "export trade activities" have the meanings given such terms in section 1 of the Webb-Pomerene Act, as amended by this Act.

TITLE III—TAXATION OF EXPORT TRADING COMPANIES

APPLICATION OF DISC RULES TO EXPORT TRADING COMPANIES

SEC. 301. (a) Paragraph (3) of section 992(d) of the Internal Revenue Code of 1954 (relating to ineligible corporations) is amended by inserting before the comma at the end thereof the following: "(other than a financial institution which is a banking organization as defined in section 101(a)(1) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) in accordance with the provisions of section 101 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a DISC which is an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 3(3) of such Act) or from export trade services (as defined in section 3(4) of such Act.".

(c) The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1982.

SUBCHAPTER S STATUS FOR EXPORT TRADING COMPANIES

SEC. 302. (a) Paragraph (2) of section 1371(a) of the Internal Revenue Code of 1954 (relating to the definition of a small business corporation) is amended by inserting ", except in the case of the shareholders of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter," after "shareholder".

(b) The first sentence of section 1372(e)(4) of such Code (relating to foreign income) is amended by inserting ", other than an export trading company," after "small business corporation".

(c) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1982.

Mr. **Bingham**. The bill is considered as read and open for amendment. The Chair has an amendment to offer in the nature of a substitute for title I of the bill. This starts at page 7. I understand the substitute is before the members. The clerk will read the amendment.

Mr. **Majak** [reading]:

> Amendment to H.R. 1799, offered by Mr. Bingham. Page 7, strike out line 12 and all that follows through page 23, line 2, and insert in lieu thereof the following:
>
> "Investments in Export Trading Companies.
>
> "Sec. 101. (a) Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended——

Mr. **Wolpe**. Mr. Chairman, I move that reading be dispensed with.

Mr. **Bingham**. Is there objection?

[No response.]

Mr. **Bingham**. Hearing none, so ordered.

[The amendment by Mr. Bingham follows:]

AMENDMENT TO H.R. 1799 OFFERED BY MR. BINGHAM

Page 7, strike out line 12 and all that follows through page 23, line 2, and insert in lieu thereof the following:

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 101. (a) Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended--

(1) in paragraph (12)(B), by striking out ''or'' at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof ''; or''; and

(3) by inserting after paragraph (13) the following:

''(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has been approved by the Board, except that such investments, whether direct or indirect, in such shares shall not exceed 5 percent of the bank holding company's consolidated capital and surplus. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the bank holding company and the export trading company involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsaf or unsound banking practices, undue concentration of resources, and decreased or unfair competition. Notwithstanding any other provision of law, in any case in which a bank holding company invests in an export trading company, such bank holding company shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of the Federal Reserve Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to the first sentence of this paragraph shall not apply with respect to the limitations imposed under section 23A of the Federal Reserve Act. For purposes of this paragraph, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this paragraph, the term 'export trade services' includes consulting, international market research, advertising, marketing product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States. For purposes of this paragraph, an export trading company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its bank holding company investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities. The name of the export trading company involved shall not be similar in any respect to the name of the bank holding company which owns any of its voting stock or other evidences of ownership.''.

(b) Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.) is amended--

(1) in the first paragraph of subsection (c), by inserting ''(1)'' after ''(c)''; and

(2) by inserting after the first paragraph of subsection (c) the following:

''(2)(A) Notwithstanding any other provision of law, with the approval of the Board of Governors of the Federal Reserve System, a corporation organized under this section may purchase and hold stock or other certificates of ownership in any other corporation which is an export trading company. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the corporations involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. No corporation organized under this section shall invest in such export trading companies in an amount in excess of 25 percent of its own capital and surplus. The second proviso of paragraph (1) shall apply to any corporation referred to in this paragraph.

''(B) Notwithstanding any other provision of law, in any case in which a corporation organized under this section purchases or holds stock or other certificates of ownership in any other corporation which is an export trading company, such acquiring corporation, or any bank or banking institution which purchases or holds stock or other certificates of ownership in such acquiring corporation, shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of this Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to subparagraph (A) shall not apply with respect to the limitations imposed under section 23A of this Act.

''(C) For purposes of this section--

''(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services; and

''(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United

States.

''(D) For purposes of this subsection, an export trading company--

''(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that the corporation which is organized under this section and which invests in the company defined in this clause may do so under applicable Federal and State banking law and regulations; and

''(ii) may not engage in manufacturing or agricultural production activities.

''(E) The name of the export trading company involved shall not be similar in any respect to the name of the corporation organized under this section which owns any of its voting stock or other evidences of ownership.''.

Mr. BINGHAM. The Chair will recognize himself for 5 minutes to explain his amendment.

The purpose and effect of this substitute is to limit investment by banking organizations and trading companies to (A) bank holding companies and (B) so-called "Edge Act corporations," that is, banking corporations already permitted under the law to engage in international nonbanking ventures.

In other words, under this substitute, ordinary commercial banks, banks that deal directly with consumers and individual depositors, would not be permitted to invest in trading companies.

The approach of the substitute differs from both H.R. 1799 and the Senate passed bill, S. 734, in that it amends existing banking statutes, that is, the Bank Holding Company Act, and the Edge Act, rather than establishing new statutory language.

This substitute follows an approach which seems to be preferred by the Banking Committee, which is the committee of primary jurisdiction in this field, and which will be acting on the legislation at some point.

I understand that a bill similar to the substitute which I am offering will be introduced shortly by Chairman St Germain.

The reason the Banking Committee prefers this approach is that it provides greater protection to depositors and preserves the long-standing principle of U.S. banking laws that banks operating directly with depositors' accounts should not be engaged in other commercial activities. Particularly not in relatively risky ventures that might endanger a bank's solvency.

Most commercial banks which are affiliated with bank holding companies or Edge Act corporations and are generally well-capitalized.

Edge Act corporations, in fact, are already permitted to invest up to 10 percent of the capital and surplus, 15 percent with the approval of the Federal Reserve Board, in international commercial ventures; this, theoretically, would include trading companies.

My substitute would make it clear that Edge Act corporations can invest in trading companies and would increase the amount of such investment with Federal approval to 25 percent of their capital and surplus.

Bank holding companies could invest up to 5 percent of their capital and surplus with Federal approval. Both could lend to their affiliated trading companies, subject to existing laws which limit loans to 10 percent of the capital and surplus loan to any single affiliate, and 20 percent to all affiliates.

PRIOR FEDERAL APPROVAL OF INVESTMENTS

Requiring prior Federal approval for these investments is a departure from H.R. 1799, which would permit some investments, generally up to $10 million, to be made in trading companies without Federal approval.

As a practical matter, I think any prudent banking organization would want to be sure that an investment it was contemplating was acceptable to the Fed and not risk having the Fed come down on them after the fact and perhaps try to force them to divest, which the Fed clearly has the power to do under existing laws. Thus, I see no problem with requiring Federal approval up front.

I would add only that in saying this substitute follows the thinking of the Banking Committee, and in offering this substitute, I am following the policy which I expressed last year. We in this committee recognize the primary jurisdiction of the Banking Committee and we are happy that that committee has proceeded to the introduction of legislation along these lines; we hope that there will be no difficulty in arriving at agreement with this committee, and in bringing this legislation to the floor.

Is there discussion?

Mr. Bonker.

Mr. **Bonker**. Mr. Chairman, you have explained clearly both the purpose and the intent of your amendment and that it is compatible with what might be coming out of the Banking and Currency Committee.

You have been in receipt of letters, as well as suggested language from Chairman St Germain, so I am fully supportive of this effort to refine the language as it relates to title I of the bill.

I do have a few questions I would like to pose so that I have a good understanding as to the distinctions.

AMENDMENT TO TITLE I

The language in Title I of H.R. 1799 allowed banks or banking organizations to participate directly in the formation of export trading companies.

I gather from what I have seen out of the Banking and Currency Committee and based on what you have said today, that it would be preferable if banks did not participate directly but through holding companies so that would, in effect, remove some of the direct managerial discretion from the banks.

Mr. **Bingham**. That's correct, plus the Edge Act corporations.

Mr. **Bonker**. With respect to the Edge Act, I notice in the earlier drafts that came from the other committee that we ought to be working through either holding companies or through Edge Act corporations, that their drafts indeed made specific reference to Edge Act corporations.

But I don't see a similar reference in your draft. All I see is a reference to bank holding companies which have been approved by the Federal Reserve Board.

Could you point out in your draft where you authorize Edge Act corporations to participate?

Mr. **Bingham**. The reference is on page 3, line 20, section 25(a) of the Federal Reserve Act.

The term "Edge Act," I understand as being the informal term used, not the official reference. I would ask counsel if that is correct?

Ms. **Strokoff**. That's correct.[1]

Mr. **Bonker**. May I ask counsel, then, is it sufficient in that language, with reference to page 3, line 20, amending section 25(a) of the Federal Reserve Act, if that would, in effect, authorize Edge Act corporations then to participate on the limitations specified in this bill?

---

[1] Sandra Lee Strokoff, Assistant Counsel, Office of the Legislative Counsel, House of Representatives.

Ms. **Strokoff**. Section 25(a) is a very long section and is essentially the Edge Act. It deals totally with Edge Act corporations and what their authorities are.

Mr. **Bonker**. OK. The only reason I pose this is that in comparing the Chairman's draft, with the earlier draft of the Banking and Currency Committee suggested language, that they did make specific reference to Edge Act corporations.

I wanted to be sure that we didn't, through a technical oversight, not fully authorize Edge Act corporations to participate.

Ms. **Strokoff**. No; this would do it.

Mr. **Bonker**. OK. It certainly adds to the shortness and brevity of the language.

Mr. Chairman, in comparing, again, your amendment with the earlier provisions of Title I, H.R. 1799, I notice that the limitations are similar, and in this case, banks would be limited to investing up to 5 percent in the aggregate of its consolidated capital and surplus and for Edge Act corporations up to 25 percent.

That is fairly similar with the limitations imposed in my language, H.R. 1799?

Mr. **Bingham**. That's correct.

Mr. **Bonker**. I also note that in the bill before the committee, we provide for approval of banks that engage in this activity by several Federal banking agencies.

Yours limits that approval to just the Federal Reserve Board. I would like to commend you in offering this language because I felt the earlier provisions in my own bill were rather cumbersome as they involved a number of regulatory agencies in extending that approval.

By limiting the provisions to holding companies and Edge Act corporations, we just basically involve one Federal regulatory agency, at least as it relates to title I of the bill.

So I think that is an improvement.

ELIMINATION OF LOAN GUARANTEES

Last, Mr. Chairman, H.R. 1799 under title I on page 21, and again, on page 22, authorizes the Economic Development Administration—what is left of it now—and the Small Business Administration, then on page 22, under section 103, the Export-Import Bank to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined hithertofor.

It seems to me that export trading companies, if they are to be a reality, and if we are going to make that reality extend to the entrepreneur, not just the large money-centered banks, that some financial assistance will be required in formation of ETC's.

Is it really necessary that we eliminate these vital sections from the bill, at least as they relate to title I?

I notice again, in the Banking and Currency Committee's earlier draft, that they included provisions that would allow financial support, Federal financial support, in formation of ETC's.

Mr. **Bingham**. If the gentleman would yield. It was our thought that, first of all, in the present budgetary crunch, that it would help enormously in passage of this bill if it were not a money bill.

With an authorization of this size, it would have to be regarded as a money bill subject to the subsequent limitations.

It is also my understanding that the Department of Commerce has funds that it can use for such assistance; in view of the strong support of the administration for this type of activity, we felt confident that the requisite funding would, in fact, be forthcoming if the authority was there.

Mr. **Bonker**. Well, Mr. Chairman, if I could suggest—and I think we will have an opportunity between the subcommittee and the full committee markup on this, to take a closer look at this—we could eliminate that section, that portion under section 102(a), that calls for an authorization.

I agree with you that we cannot authorize or appropriate any monies now in legislation such as this and expect it to go anywhere.

But we could still authorize the agencies in any case to extend loan guarantees or some kind of assistance to forming these trading companies. I am particularly interested in section 103 and the desire to keep that intact, because, again, that does not call for an authorization or an appropriation.

Again, all we are doing is recognizing the importance of ETC's and as long as these agencies are in the business of helping to finance, especially small businesses, I can't think of anything that could help with economic recovery more than allowing ETC's to be formed and export more of our products abroad.

Mr. **Bingham**. I would be glad to discuss that further with the gentleman before we reach the full committee. It is my understanding that in this administration, the OMB considers loan guarantees almost on a par with actual authorizations.

I think this is something we should carefully review as to whether or not it would run into the same argument that I mentioned before.

Mr. **Bonker**. Well, I am not going to object, Mr. Chairman, to the amendment as presented. But between the subcommittee and full committee markup, perhaps we can confer with the Department of Commerce and see if we can retain those provisions.

Mr. Chairman, I want to commend you for the amendment. I fully support it.

Mr. **Bingham**. I thank the gentleman.

Is there further discussion of the substitute?

If not, those in favor of the substitute, signify by saying "aye."

["Ayes" were heard.]

Mr. **Bingham**. Opposed?

[No response.]

Mr. **Bingham**. The substitute is agreed to.

Are there further amendments?

CLARIFICATION OF ANTITRUST LAWS

Mr. **Shamansky**. Yes, Mr. Chairman.

Mr. **Bingham**. Mr. Shamansky.

Mr. **Shamansky**. Mr. Chairman, the amendment being handed out now is very short, if I may just ask that the clerk read it.

Mr. **Bingham**. Without objection.

Mr. **Majak** [reading]:

AMENDMENT TO H.R. 1799, OFFERED BY MR. SHAMANSKY

Page 26, line 22, strike out "An" and insert in lieu thereof "(1) Except as provided in paragraph (2) of this subsection, an".

Page 27, line 11, strike out the closed quotation marks and second period.

Page 27, insert the following after line 11:

"(2) Notwithstanding paragraph (1) of this subsection, the antitrust laws shall apply to an association or export trading company, the members of such association or export trading company, and to the conduct of such association or export trading company to the extent that such association or export trading company or conduct has a direct, substantial, and reasonably foreseeable effect on trade or commerce which is not export trade.".

Mr. **BINGHAM**. The gentleman is recognized for 5 minutes to explain his amendment.

Mr. **SHAMANSKY**. Thank you. I think we might well repeat the colloquy between me and Secretary Baldrige.

> Mr. **SHAMANSKY**. But if, in fact, these companies did violate the law and did warrant rescission of the certification, why would the harmed party not be entitled to simple damages?

And Secretary Baldrige said:

> Well, as I understand it, Congressman, the certification does not protect ETCs for damages for domestic violations, if that is your point.
>
> Mr. **SHAMANSKY**. I guess that was my point, because my information is right now it is not a violation if they engage in these practices outside the United States.
>
> Secretary **BALDRIGE**. That's right, but if they did inside the United States, it is a violation.
>
> Mr. **SHAMANSKY**. If it comes back to the United States, then it is a violation in the United States?
>
> Secretary **BALDRIGE**. Let me check with our general counsel, Mr. Unger.

Then Mr. Sherman Unger, who is general counsel, spoke:

> As I understand the question, you are asking about domestic damages. The certification does not protect an ETC from any conduct that would occasion domestic damages where it is certified or decertified.
>
> Mr. **SHAMANSKY**. It does not exempt them?
>
> Mr. **UNGER**. It does not protect them.
>
> Mr. **SHAMANSKY**. If there is domestic harm?
>
> Mr. **UNGER**. Then they are liable.
>
> Mr. **SHAMANSKY**. Then the exemption applies only to precisely what?
>
> Mr. **UNGER**. Activities covered by the certification.
>
> Mr. **SHAMANSKY**. Okay.

It seems to me that if this act doesn't mean precisely that, I don't know what it means. This amendment is designed, and all it does is, to make explicit what was implicit up to this point.

In my interpretation of the original legislation, they had that protection anyway, but the claim of the witnesses was their lawyers said that there was an ambiguity.

As a lawyer, I can find an ambiguity lots of places, too, but I am willing to concede there is an ambiguity under existing legislation.

The good thing about H.R. 1799 is that it removes that ambiguity, and we are making explicit at this point, which is the appropriate point, that it applies extraterritorially, that the antitrust laws still apply domestically.

Mr. **WOLPE**. Mr. Chairman.

Mr. **BINGHAM**. Mr. Wolpe.

Mr. **WOLPE**. Mr. Chairman, I believe that the amendment that is offered by Mr. Shamansky is a constructive one. I am myself a cosponsor of this legislation.

I think it is critical that the United States does everything possible to expand our export markets and that potential. I believe that the legislation that has been spearheaded by Congressman Bonker is a very important contribution to that effort.

Consistently throughout our debate, however, as Mr. Shamansky has indicated, all of the advocates for the concept that is embodied in this bill have indicated there was no intention to undermine domestic antitrust law.

I believe this amendment now being offered by Mr. Shamansky clarifies what has been stated from the onset as to the intent of this legislation.

I believe it merits support of this committee.

Mr. BINGHAM. May I ask whether the amendment has been worked out with committee counsel?

Ms. STROKOFF. Well, to some extent.

Mr. BONKER. Maybe you could ask for counsel's comment on it. She has it before her, Mr. Chairman.

Ms. STROKOFF. I believe there is some difference between the language of the amendment and of the bill. If you look at the language on page 26 of the bill, it sets out the criteria for a certificate to be awarded and it says that restraints are placed on what export trading companies or trade associations can do and cannot do. It says they can't do anything in restraint of trade within the United States or in restraint of the export trade of any domestic competitor, or do anything to artificially enhance or depress prices.

Those are limitations. Now this amendment says the antitrust laws shall apply to the association to the extent it affects domestic activity.

You could say that the antitrust laws, to the extent they deal with more than simply restraint of trade or depression of prices—for example, monopolies are prohibited, that sort of thing—that they could be read as somewhat broader than the limitations in the bill, but the amendment is restricted to only domestic activity and not export trade.

Mr. BINGHAM. Is there further discussion of the amendment?

Mr. BONKER. Mr. Chairman, I think it is an excellent amendment.

Mr. SHAMANSKY. Thank you.

Mr. BONKER. I can support it. Mr. Shamansky and Mr. Wolpe had raised concerns, and I believe understandable concerns, about the potential effects of this legislation on antitrust laws as they relate to domestic commerce. It is certainly not the intent of this author, and others who support this legislation, to in any way lower the vigilance we have through the antitrust laws within the domestic economy.

Of course, this is the issue. People who have been following this legislation know, it is this feature that raised questions in the Judiciary Committee.

You have gone a long way toward clarifying the intent and the potential effects of the language under this title and I think it is a necessary addition to the bill, and certainly would support it.

Mr. BINGHAM. Further discussion of the Shamansky amendment? If not, all in favor will signify by saying "aye."

["Ayes" were heard.]

Mr. **Bingham**. Opposed, "no."

[No response.]

Mr. **Bingham**. The "ayes" have it. The amendment is agreed to.

DELETION OF DISC PROVISIONS

There is an additional amendment which is not in print, but which I offer to strike the provisions of title III of the bill.

These are the provisions which deal with tax questions and are strictly within the jurisdiction of the Ways and Means Committee.

I believe that there is consensus on the subcommittee for us to delete these provisions at the present time, as that would facilitate our taking H.R. 1799 to the floor.

The gentleman from Washington?

Mr. **Bonker**. I am reluctant to support the Chairman's judgment, but as usual, it is good judgment.

If we were to retain this provision, we would indeed be looking toward further delay and inaction on the legislation because the Ways and Means has expressed concern about any tampering with this tax provision, at least until after our negotiators have fully resolved the question.

It is wise that we remove this section of the bill for the time being but maybe in a future session we could look at another export trading company bill that would expand the authority and the opportunities for ETC's, including the application of the DISC tax provision for trading companies.

But for the moment, I support the amendment.

Mr. **Bingham**. Is there objection to the amendment striking title III?

[No response.]

Mr. **Bingham**. Hearing none, the amendment is agreed to.

Are there further amendments?

If not, I would like to ask unanimous consent that the staff be authorized to make technical changes in the bill, particularly making sure that the definitions are consistent throughout the bill.

Is there objection?

[No response.]

Mr. **Bingham**. If not, so ordered.

Noting the presence of a quorum, the gentleman from Washington is recognized to move to report favorably the bill to the full committee.

Mr. **Bonker**. Mr. Chairman, I move adoption of H.R. 1799, as amended.

Mr. **Bingham**. And to report it to the full committee with an affirmative recommendation.

Mr. **Bonker**. Yes.

Mr. **Bingham**. All those in favor, signify by saying "aye."

["Ayes" were heard.]

Mr. **Bingham**. Opposed, "no."

[No response.]

Mr. **Bingham**. The "ayes" have it. So ordered.

The subcommittee members are thanked for their cooperation. Thank you. We are adjourned.

[Whereupon, at 2:46 p.m., the subcommittee was adjourned to reconvene at the call of the Chair.]

THE EXPORT TRADING COMPANY ACT OF 1982

THURSDAY, APRIL 29, 1982

House of Representatives,
Committee on Foreign Affairs,
Washington, D.C.

The committee met in open markup session at 9:50 a.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman) presiding.

Chairman Zablocki. The committee will please come to order.

Before we begin our foreign aid hearing, we will first consider House Resolution 1799, the Export Trading Company legislation which has been referred to the full committee by Subcommittee on International Economic Policy and Trade.

The Chair will recognize the Honorable Jonathan B. Bingham, chairman of the subcommittee, for an explanation of the subcommittee's action on the draft bill, a copy of which is before each member. Mr. Bingham.

Mr. Bingham. Thank you, Mr. Chairman.

This legislation, members will recall, has a rather long history before this committee. Substantially the same bill was considered in the last Congress and was reported favorably. No action was taken, however, because the other two committees to which similar legislation was jointly referred, the Judiciary Committee and the Banking Committee, did not take action.

The purpose of the bill is to increase U.S. exports by encouraging and strengthening export trading companies and export trade associations, which provide the services that many U.S. producers of goods and services need in order to export.

I would like to pay tribute to the gentleman from Washington, the principal sponsor of the bill, Mr. Bonker, who has taken the lead in this matter; without his persistence and patience I think we would not be as far along as we are. I will yield to him in a moment.

Let me say that we are proceeding at this time in the hope that we can move the legislation and stimulate action by the other two committees. It may be that provisions in this bill have to be modified to comply with the wishes of those committees, because they do have the primary responsibility and jurisdiction with respect to those provisions affecting banks and those affecting the antitrust laws.

I could go into more detail at this time, Mr. Chairman, but if my opening statement could be included in the record in full I will not burden the committee with going over it at this time. May I ask unanimous consent, Mr. Chairman, to include that full statement in the record?

Chairman **Zablocki**. Without objection.

[Mr. Bingham's prepared opening statement follows:]

PREPARED OPENING STATEMENT OF HON. JONATHAN B. BINGHAM, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

Mr. Chairman, this proposed legislation (H.R. 1799) has a rather long history in this Committee. Substantially the same bill was considered by this committee in the last Congress (H.R. 7230) and was reported favorably on July 1, 1980 (Rept. No. 96–1151). No action was taken, however, in the 96th Congress by the other two committees to which similar legislation was jointly referred—the Committee on the Judiciary, and the Committee on Banking, Finance, and Urban Affairs. So this committee's action on H.R. 7230 lapsed at the end of the 96th Congress.

The purpose of this bill is to increase U.S. exports by encouraging and strengthening export trading companies and export trade associations which provide the services that many U.S. producers of goods and services need in order to export. It is well established that Japan, South Korea, and some of the Europen nations have relied heavily on highly sophisticated and well financed trading companies to achieve the strong positions they now occupy in world markets. This bill is not likely to result in U.S. trading companies comparable to those of the Japanese. But it would strengthen U.S. trading companies and export trade associations, and thus contribute positively to the U.S. export position. That is the reason it has wide support throughout the U.S. business community. It had the support of the previous (Carter) administration, and is supported by the current one. The Senate passed a similar bill in the first session of this Congress (S. 734) without a dissenting vote.

The purpose and likely effects of this bill are non-controversial, I think. The same cannot be said, however, for all of the specific provisions of the bill. H.R. 1799 would allow bank holding companies and so-called Edge Act (international) banks to invest a portion of their capital and surpluses in trading companies, and would expand anti-trust exemptions under the Webb-Pomerene Act for trading companies and export trade associations. Those measures are controversial within the Banking and Judiciary Committees, which have primary jurisdiction over them.

The subcommittee's lateness in bringing this legislation to the full committee in this Congress has been due to our desire to give the other committees or jurisdiction an opportunity to take action, but those committees have again been slow to do so. In the Judiciary Committee, Chairman Rodino's subcommittee has approved his bill, H.R. 5235, which simply attempts to clarify the antitrust laws with respect to exports, but no action has been taken on that bill or bills similar to H.R. 1799 by the whole Judiciary Committee. Similarly, in the Banking Committee, hearings were begun only last week on Chairman St Germain's bill, H.R. 6016, the Bank Export Services Act.

Certainly the delay in bringing this bill before the full Committee is no fault of its sponsor, the gentleman from Washington (Mr. Bonker). Indeed, his persistence and support and patience have been instrumental in the subcommittee's action on the bill, and I want to commend him for his leadership with respect to this bill both as a member of the subcommittee and as current chairman of the House Export Task Force. If we eventually succeed in gaining House support for this legislation, and its ultimate enactment, it will be due in no small part to the efforts of the gentleman from Washington.

Let me draw the committee's attention, Mr. Chairman, to just a few aspects of this bill (members have a section by section summary, as well as the full text, before them). First, responsibility for encouraging the formation and support of trading companies and associations is vested in the Secretary of Commerce. That, I would note, is the basis for the jurisdiction of this committee over this legislation—our jurisdiction over export trade and trade promotion by the Secretary of Commerce. The Secretary is directed to establish a special office for export trading companies and associations within Commerce, and is authorized—in consultation with the Attorney General and the Federal Trade Commission—to issue certificates of antitrust exemption to trading companies and associations.

The banking provision of this bill, Mr. Chairman, is substantially the same as proposed by Chairman St Germain in the first section of his bill, H.R. 6016. With prior approval of the Federal Reserve Board, bank holding companies and international banks organized under the Edge Act would be permitted to invest a limited portion of their capital and surplus in export trading companies (10 percent in the case of bank holding companies and 25 percent in the case of Edge Act corporations). This represents only a modest increase in the amounts such banks are already permitted to invest in nonbanking enterprises. In order to provide maximum protection to individual bank depositors, H.R. 1799 would not allow regular commercial banks to invest in trading companies. Limitations already in the banking laws on lending by banking organizations to their nonbanking affiliates, and handling of securities transactions by such affiliates, would apply to any export trading companies in which they might invest. So this is a very limited proposal for bank involvement in trading companies. Nevertheless, since most bank holding companies and Edge Act corporations are well capitalized, H.R. 1799 would significantly increase the amount of capital that could become available to trading companies. By all accounts from witnesses that have appeared before the subcommittee, insufficient capital and financing is the major inhibition on expansion of U.S. trading companies. So this provision, despite its limits, should go a long way to solving that fundamental problem.

One change that the subcommittee did make in incorporating in H.R. 1799 a portion of H.R. 6061 was to change the definition of "trading companies" from companies engaged "exclusively" in exports to companies engaged "principally" in exports. I don't think we want to be in a position of encouraging firms that are mostly importers of foreign goods. But to be effective and efficient exporters of U.S. goods, export trading companies and associations must have the flexibility occasionally to import goods and services—perhaps the finished products, for example, of some of their export customers. So we have tried to provide that flexibility in this bill by stipulating only they be "principally" engaged in export, meaning that their exports must exceed their imports, this having a positive effect on the U.S. balance of trade.

With respect to antitrust problems, Mr. Chairman, H.R. 1799 would give such export trading companies and associations greater certainty as to their status and the status of particular export activities by enabling them to obtain a certificate of antitrust exemption for their particular export operations. Within the boundaries of such a certification, they would be exempt from liability for any damages to U.S. commerce. Mr. Shamansky offered an amendment, which the Subcommittee accepted and which is in the bill before the Committee, making clear, however, that such exemption from liability would not extend to any damaging effect on domestic U.S. trade which is "direct, substantial, and reasonably foreseeable." Presumably, however, the Secretary of Commerce would not certify any such activities, so the amendment only stresses the point that even certified exporters would continue to be liable for any damages resulting from actions going beyond the limits of their certification.

Mr. Chairman, I believe this is a reasonable and balanced bill which will achieve its intended goal of expanding U.S. exports by strengthening and encouraging the formation of U.S. export trading companies and associations. It is not a panacea. It will not, in itself, correct our serious export trade deficit. I have thought at times that the enthusiasm of the business community for this bill was perhaps exaggerated. The bill will not be of much help to the larger U.S. producers—most of whom are wealthy and sophisticated enough to have their own export marketing facilities. It will mostly help smaller producers who need the assistance of experiences and well-financed middlemen to do their exporting for them, and to lead them to export customers. That is a worthwhile purpose, and on that basis I and the subcommittee commend this bill favorably to the committee, and urge that it be reported favorably to the House.

Mr. BINGHAM. At this point I will yield to the gentleman from Washington.

Mr. BONKER. Thank you.

At this time I would like to acknowledge the leadership of the gentleman from New York, who is chairman of the subcommittee and who has been very patient and supportive of this legislation for the past two sessions of Congress. I also would like to acknowledge the support and assistance of his very able staff.

As the gentleman from New York points out, this legislation is not new. It has been before this committee in a previous Congress. However, we do believe at this time that we have the necessary cooperation from the other committees who have rightful jurisdiction over certain sections of the bill.

I would like to point out that this legislation has passed the Senate on two occasions: In the prior Congress with a Democrat-controlled Senate, and this time, with a Republican-controlled Senate. In both instances the legislation passed without a dissenting vote.

It has been strongly supported by both the Carter and the Reagan administrations. It enjoys widespread support in the business community.

We have allowed ample time for the other committees who have jurisdiction to consider the various provisions of this legislation so that they could recommend changes for our deliberation. I would like to point out that the subcommittee has incorporated the banking provisions which had been recommended by Mr. St Germain, chairman of that committee. I understand that the committee will shortly be voting out more definitive language, which I think will be a acceptable to our committee.

ENHANCING EXPORT COMPETITIVENESS

Mr. Chairman, I would point out that the United States is now in a fiercely competitive world. If the economy of the United States does not find its place in that economy and does not do more to enhance or increase our export potential, then we are going to experience a continued decline in overall U.S. dominance of the world economy.

We have been on a serious decline over recent years as other countries have become more competitive. We need to make it possible for more segments of our economy to get active in the export market. Presently, almost all exporters are the large corporations. Indeed, 1 percent of the industrial sector in our economy is responsible now for 80 percent of the exports.

I understand that in Japan and the Pacific rim countries 60 to 80 percent of their industrial output goes into exports. So the fact of the matter is, if we are going to enhance our export potential, if we are going to be more competitive, it is vitally necessary that we make it possible for medium and small-sized firms to get into that export market.

That is exactly what this legislation is designed to do. The Secretary of Commece testified before our subcommittee and pointed out that there are presently 20,000 U.S. manufacturers who would compete in the world market, but who lack the means and the opportunity to do so.

BANKING PROVISIONS

This legislation is designed in such a way that it would help facilitate the export activities so that small- and medium-sized firms can get into that market. The bill consists, as the chairman of the subcommittee has pointed out, of bascially two sections, one of which deals with banking provisions and would make it possible for the first time for banks, through holding companies and through Edge Act corporations, to get involved as equity owners in the formation of export trading companies.

We feel that the language that has been forwarded by Mr. St Germain is proper. It provides the necessary safeguards so that we do not have abuse. It provides for a unified regulatory action through the Federal Reserve Board, rather than multiple regulatory agencies which were part of the earlier draft that I introduced.

ANTITRUST PROVISIONS

The second provision deals with antitrust laws and really extends the scope of the Webb-Pomerene Act, which allowed the formation of export trade associations. The idea here is to remove the potential threat of violation of antitrust laws to those companies that come together in a collaborative way to arrange prices so that they can compete in the world market.

Again, we do not want to tamper at all with the application of the antitrust laws as they are applied in the domestic market, but rather to make it possible for those companies to compete in a collective manner in the world market. And we are anxious for the Judiciary Committee to act so that we can have the benefit of their wisdom and their recommendations on the antitrust provisions of this legislation.

ELIMINATION OF CERTAIN PROVISIONS

Finally, Mr. Chairman, the original bill carried several additional provisions which have been eliminated. I have always felt that if the trading company was to function on an equal basis it should have access to the DISC—the domestic international sales corporation—tax provision, so they could take advantage of that tax program as do other companies. However, that would involve the bill going to the Ways and Means Committee, and we feared further delay.

Also, we wanted to see the Economic Development Agency and the Small Business Administration in a position to extend loans or loan guarantees to those who wished to form trading companies. But again, given the financial constraints that we are now facing in the Congress, we did not feel it was timely to include those provisions.

Aside from that, I think the legislation is solid. It is widely supported in the private sector, and I think it is an issue whose time has come. I would urge favorable action by the committee on this bill today.

Thank you.

Chairman ZABLOCKI. Is there further discussion?

Mr. LAGOMARSINO. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from California, Mr. Lagomarsino.

Mr. LAGOMARSINO. Mr. Chairman, I would like to speak very briefly on the legislation.

Chairman ZABLOCKI. The gentleman is recognized.

Mr. LAGOMARSINO. As a cosponsor of the legislation, I want to commend the chairman of the subcommittee, Mr. Bingham, and the author, Mr. Bonker, for their tireless and effective efforts to move the bill through the House. As has been said, the legislation is still pending before the House Banking and Judiciary Committees, and the administration and the members of this committee have been working with members of those committees to obtain some agreement on the compromise bill.

H.R. 1799: A BENEFICIAL BILL

Although H.R. 1799 has not yet been accepted by the other committees, I believe it does represent a responsible approach to improving our export capability by promoting the establishment of export trading companies. H.R. 1799 would prove to be particularly beneficial for small- and medium-sized businesses that do not have the experience or resources to attempt to export trade on their own. And, as has been pointed out, it would amend the antitrust laws to permit U.S. companies to join together for the purposes of export trade, providing there is no substantial effect on domestic trade.

The certification procedure developed by the bill would provide certainty for export trading companies that, once certified, they would not be subject to antitrust prosecution. It was this lack of certainty in the Webb-Pomerene Act that kept the law from serving as a greater stimulus to export trade. By correcting the deficiencies of that law and by adding services to the accepted list of activities that could be the basis for forming ETC's, the bill goes a long way toward meeting the challenge of the Japanese and European trading company competitors.

The administration strongly supports the bill and the concept of export trading companies. The administration spokesman did, however, express some reservations about language that was added during subcommittee markup regarding the application of antitrust laws. It is their view that such language, if enacted into law, could invalidate or go in the direction of invalidating the effectiveness of the certification procedure and might leave exporters with the same uncertainties as before. So it is an issue, I think, that does require careful study.

GRANDFATHER CLAUSE

One feature of the bill deserves particular attention, and that is providing grandfather language which provides for the continued operation of existing Webb-Pomerene associations under their current status until they are certified under the new law.

STATE PROMOTION

Another important feature is the reference to the role of States in initiating, promoting and expanding exports in their own efforts to improve export trade. Certainly in the case of Califorina and other Western States, the States have been leaders in shaping policy that deals efficiently with trade and services with its neighbors to the south and in the Pacific basin.

I strongly support the provisions of H.R. 1799 designed to encourage the continued operation of Webb-Pomerene associations and promote the development of new export trading companies dealing in goods and services. I think the bill will be very helpful in two ways:

One, in doing the things to allow companies to actually get into the business, to cooperate, to consolidate their efforts; and second, as a very meaningful statement, if you will, by the administration and by the Congress that we support and are going to help and assist this type of activity. I think that might be as important as the substantive parts of the bill.

So I urge my colleagues to vote for the bill here today and do whatever they can to support action in the other committees and on the floor.

Mr. **Findley**. Will the gentleman yield to me?

Mr. **Lagomarsino**. I yield to my colleague.

JOB PROMOTION

Mr. **Findley**. I want to thank the gentleman and note that our colleagues on the other committees obviously overlook the element of urgency that pertains to this. We have great need these days, more so than in many years, to stimulate foreign trade, to find new markets for U.S. products.

Here is legislation that would help open markets, help provide jobs for U.S. citizens. I hope that somehow the message can get through to other committees that they should move forward with this and get it to the House floor so that this can become law.

Chairman **Zablocki**. The gentlelady from New Jersey.

Mrs. **Fenwick**. Thank you, Mr. Chairman.

I would like to commend our chairman, Mr. Bingham, and the remarks of my colleague, Mr. Lagomarsino of California. This can be and should be so important in the development of new jobs in this country, American jobs paid for by a foreign currency, involving small companies where the jobs need to develop.

In my area, just in the last 2 months I have given out two awards to small companies that have increased their export trade. One of them presently recounts that 50 percent of its trade is in exports. They grew from 14 to 35 exployees. If we could get many of these small companies developing like that in many towns, I think this will be a big help.

If you go abroad to these big conference and trade fairs, General Electric and Westinghouse and big companies are represented. But how can the little companies even know that the conference is taking place? This will be a great help.

Thank you, Mr. Chairman. I commend everyone involved here.

Chairman **Zablocki**. Is there any further discussion?

[No response.]

Chairman **Zablocki**. If not, the chief of staff will begin reading the amendment in the nature of a substitute of H.R. 1799 incorporating amendments adopted by the subcommittee.

Mr. **Brady** [reading]:

> A bill to encourage exports by facilitating the formation and operation of export trading companies and export trade associations.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
>
> SHORT TITLE
>
> **Section** 1. This Act may be cited as the Export Trading Company Act of 1982.

Mr. **Bingham**. Mr. Chairman.

Chairman **Zablocki**. The gentleman from New York.

Mr. **Bingham**. Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and open for amendment.

Chairman **Zablocki**. Is there objection?

[No response.]

Chairman **Zablocki**. The Chair hears none.

Are there any amendments?

Mr. **Bingham**. Mr. Chairman.

Chairman **Zablocki**. The gentleman from New York.

TECHNICAL AMENDMENTS

Mr. **Bingham**. Mr. Chairman, I do have a technical amendment which I would ask be circulated.

Chairman **Zablocki**. The amendment will be distributed. The chief of staff will read the amendment.

Mr. **Brady** [reading]:

> Amendment offered by Mr. Bingham. Page 13, line 23, strike out "and" and insert at the end of line 22 the following: "Section 5 of the Federal Trade Commission Act, 15 U.S. Code 45, to the extent that Section 5 applies to unfair methods of competition."

Chairman **Zablocki**. The gentleman from New York is recognized in support of his technical amendment.

Mr. **Bingham**. Mr. Chairman, this simply corrects an oversight. The listing of the antitrust laws that are referred to in that act omitted the Federal Trade Commission Act; it should be added to the list that appears at the bottom of page 13 of the committee print.

Chairman **Zablocki**. Is there objection to the technical amendment?

[No response.]

Chairman **Zablocki**. The Chair hears none. It is so ordered.

Chairman **Zablocki**. Are there any further amendments?

[No response.]

Chairman **Zablocki**. If not, the Chair would entertain a motion.

Mr. **Bingham**. Mr. Chairman.

Chairman **Zablocki**. The gentleman from New York.

Mr. **Bingham**. Mr. Chairman, I move that H.R. 1799 as amended be reported favorably to the House and that the necessary action be taken.

Chairman **Zablocki**. All those in favor signify by saying "aye."

["Ayes" were heard.]

Chairman **Zablocki**. Opposed, "no."

[No response.]

Chairman **Zablocki**. The "ayes" have it. The motion is agreed to.

[Whereupon, the committee proceeded with other business.]

APPENDIX 1

LETTER DATED JUNE 4, 1981, TO HON. PETER W. RODINO, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, FROM GARY M. WELSH, COUNSEL TO THE BANKERS' ASSOCIATION FOR FOREIGN TRADE

BANKERS' ASSOCIATION FOR FOREIGN TRADE
1101 SIXTEENTH STREET, N.W., SUITE 501
WASHINGTON, D.C. 20036

(202) 833-3060

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COUNSEL
THOMAS L. FARMER, ESQ.
WASHINGTON, D.C.

EXECUTIVE DIRECTOR
M. CONDEELIS
WASHINGTON, D.C.

June 4, 1981

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing on behalf of the Bankers' Association for Foreign Trade ("BAFT") to express the Association's views on H.R. 2326, the Foreign Trade Antitrust Improvements Act of 1981, and H.R. 1648, the Export Trading Company Act of 1981. Since we understand that the Subcommittee on Monopolies and Commercial Law may soon consider these bills in a mark-up session, we thought our views might be of some assistance to you and your colleagues in your deliberations.

BAFT was founded in 1921 by a group of banks whose purpose was to expand their knowledge of international trade and to develop sound banking services in support of trade. Today, BAFT's voting membership of 151 U.S. banks includes virtually all of those having significant international operations. The Association also includes as non-voting members 97 foreign banks maintaining offices in the United States, and thus embraces many of the international banks of the world.

BAFT has been a strong supporter of export trading company ("ETC") legislation, because we believe it provides an important first step toward improving the long-run trade competitiveness of the U.S. in world markets. We believe that banking organizations can bring to ETCs crucial knowledge and experience in trade financing and ancillary services such as foreign exchange and trade documentation and warehousing, that ETCs will need in order to be successful outside the U.S. We thus strongly support H.R. 1648, in particular, section 105 which would permit banking organizations to acquire equity interests in ETCs.

FOSTERING SOUND INTERNATIONAL BANKING SINCE 1921

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Although most of BAFT's attention has been focussed on the issue of bank participation, we also support Title II of H.R. 1648 which establishes an antitrust exemption certification procedure that will be important to the success of ETCs in world markets.

For our members, the greatest benefit of Title II is its offer of antitrust certainty in ETC operations. This is particularly true for smaller and regional banks whose participation in ETCs is crucial to reaching the small and medium-sized business firm that could be exporting through an ETC. These banking organizations have generally had little reason to be actively concerned with the interpretation and application of U.S. antitrust laws internationally, and the existence of uncertain interpretations of law or possible litigation in this area could be a major stumbling block to their participation in ETCs. The more uncertain financial and other risks there are in an ETC, the less likely it is that such banking organizations will choose to participate in ETCs. It would also seem that given their concerns for bank safety and soundness, that the bank regulatory agencies will also be more reluctant to approve banking organization investments in ETCs where there are antitrust uncertainties and thus possible litigation and liabilities. In this regard, smaller and regional banks are more likely to face such uncertainties since, based on discussions within BAFT, they will be more likely to participate in joint venture ETCs. Some of these ETCs may involve joint ventures of several banks, or of banks and commercial concerns, and it is precisely these types of joint activities where the need for certain antitrust immunity will be greatest.

For these reasons, we urge you and your colleagues to approve Title II of H.R. 1648 since we believe that it will be of critical importance to the overall success of ETC legislation which we know you support. Since your bill, H.R. 2326, addresses much broader objectives than H.R. 1648, objectives which we share of generally improving U.S. competitiveness in world markets, we would urge that it not be viewed as a replacement or substitute for Title II of H.R. 1648, but rather that it be viewed as a desirable and important complement addressing much broader

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business antitrust issues. We thus believe that linking H.R. 2326 with Title II of H.R. 1648 would strengthen the ETC bill and give a clear signal of a U.S. commitment toward a more competitive U.S. export policy.

Sincerely,

/s/ Gary M. Welsh

Gary M. Welsh
Counsel to the Bankers' Association
for Foreign Trade

GMW/jyh
cc: Majority Members of the Monopolies and Commercial
Law Subcommittee, House Judiciary Committee

APPENDIX 2

STATEMENT SUBMITTED BY JOHN D. WELSH, DIRECTOR, INTERNATIONAL DIVISION, GEORGIA DEPARTMENT OF INDUSTRY AND TRADE

W. Milton Folds
Commissioner

STATEMENT

THE EXPORT TRADING COMPANY ACT OF 1981

The State of Georgia has, through the years, been extremely active in all areas of international trade and development. The Georgia Department of Industry and Trade is the State Agency responsible for stimulating export marketing activities with Georgia businesses. In support of these activities, the Georgia Department of Industry and Trade maintains Overseas Offices in Brussels and Tokyo and are now establishing a full-time office in Toronto, Canada. The purpose of these offices is to attract investment to Georgia and support the Georgia business community in expanding overseas markets for their products.

In regard to the broad area of international trade development, the Georgia Department of Industry and Trade strongly endorses the concept contained in the "Export Trading Company Act of 1981", Senate Bill 734 and the appropriate House of Representative Bills under consideration at this time. We have seen, time and again, overseas companies and countries supporting their business community in the international marketplace. On frequent occasions Georgia companies have failed to consummate contracts or sales due to United States impediments to trade. It is our feeling that the "Export Trading Company Act of 1981" will provide a stimulus to many companies to further expand their activities into the international marketplace.

The Georgia Department of Industry and Trade strongly endorses the "Export Trading Company Act of 1981" and it is hoped that favorable consideration will be given to passage of this act to further improve the international capability of the Georgia business community.

If additional information or data may be required, we will be most happy to provide it.

Signed: John D. Welsh
John D. Welsh
Director, International Division
Georgia Department of Industry and Trade
(404) 656-3577

Georgia Department of Industry & Trade, 1400 North Omni International, P.O. Box 1776, Atlanta, Georgia 30301, Telex: 54-2586 GA INTL ATL

APPENDIX 3

LIST OF EXPORT SALES FROM THE STATE OF GEORGIA, 1967-81

INCREASE IN EXPORTS FROM GEORGIA

1967-1981

1967	Manufacturing	$ .4 billion
	Agriculture	.1 "
	Total	.5 "
1972	Manufacturing	1.3 billion
	Agriculture	.2 "
	Total	1.5 "
1976	Manufacturing	1.4 billion
	Agriculture	.4 "
	Total	1.8 "
1977	Manufacturing	1.5 billion
	Agriculture	.4 "
	Total	1.9 "
1978	Manufacturing	1.6 billion
	Agriculture	.5 "
	Total	2.1 "
1979	Manufacturing	2.0 billion
	Agriculture	.6 "
	Total	2.6 "
1980	Manufacturing	2.4 billion
	Agriculture	.6 "
	Total	3.0 "
1981 (est.)	Manufacturing	2.6 billion
	Agriculture	.7 "
	Total	3.3 "

APPENDIX 4

LETTER DATED JULY 2, 1981, TO HON. JONATHAN B. BINGHAM FROM THOMAS A. FAIN, PRESIDENT, AMERICAN INSTITUTE OF MARINE UNDERWRITERS

AIMU
14 WALL STREET • NEW YORK, N.Y. 10005
(212) 233-0550 • TELEX: 129245 • CABLE: AMERTUTE

July 2, 1981

The Honorable Jonathan B. Bingham, Chairman
Subcommittee on International Economic
Policy and Trade
Room 707
House Annex I
Washington, D.C. 20515

Attention: Mr. Roger Majak
Staff Director

Honorable Sir:

The American Institute of Marine Underwriters (AIMU) is vitally interested in the bills now before your committee which would authorize the establishment of export trading companies. We have supported similar legislation in the Senate and continue to encourage all efforts to increase export trade. We believe, however, that the bills before your committee require clarification of certain activities of the proposed export trading companies.

A close review of the drafting of these bills has raised substantial questions about the sorts of insurance activities which export trading companies will be authorized to undertake. The bills generally state very simply that insurance is one of the services in which an export trading company may engage. The failure to clarify the nature of these insurance activities could lead to difficulties in implementation. To date there has been no legislative history which defines the parameters of this insurance activity.

Is it the intention of Congress that export trading companies would underwrite risks of cargo in transit?

If so, would such companies have to comply with state regulation of insurance companies vis a vis assets, licensing, etc?

Does Congress envision export trading companies functioning as agents or brokers?

If so, what are the licensing implications?

How will these favored entities compete with existing domestic markets?

Does Congress simply envision export trading companies functioning much like some freight forwarders who provide insurance on the basis of an open cargo policy underwritten by authorized insurers?

We believe these are serious questions which need to be addressed before any export trading company act bill becomes law. The potentially unlimited insurance functions of an export trading company cause particular alarm in view of the fact that banks may invest heavily in export trading companies. This bill appears to present an opportunity for further encroachment of banks into the industry of insurance.

We hope that your committee will be able to shed some light on what is intended by these legislative proposals. Thank you.

Very truly yours,

Thomas A. Fain
President

TAF/ca

APPENDIX 5

LETTER DATED MARCH 2, 1982, TO HON. JONATHAN B. BINGHAM FROM J. ALLEN OVERTON, JR., PRESIDENT, AMERICAN MINING CONGRESS

AMERICAN
MINING
CONGRESS
FOUNDED 1897
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1920 N STREET NW
WASHINGTON
DC 20036
202/861•2800
TWX 710•822•0126

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Charles F. Barber
Vice Chairman and Chairman, Finance Committee:
Paul W. Douglas
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Samuel K. Scovil, Cleveland
James W. Wilcock, Pittsburgh
Thomas A. Holmes, Woodcliff Lake NJ
Pierre Gousseland, Greenwich
Nels W. Stalheim, Salt Lake City
A.M. Wilson, San Francisco
Robert H. Quenon, St. Louis
Ralph F. Cox, Denver
Thomas D. Barrow, Stamford
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Harry M. Conger, San Francisco
Robert M. McCann, Bethlehem
Richard G. Miller, Jr., Chicago
Walter E. Ousterman, Jr., Oakland
William M. Troutman, Cleveland
Ray W. Ballmer, Englewood CO
R.J. Gary, Dallas
Thomas Marshall, Pittsburgh
William M. McCardell, New York
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Michael A. Morphy, Los Angeles
Charles W. Parry, Pittsburgh
†Raymond E. Salvati, Ft. Lauderdale
†Ian MacGregor, Greenwich
•Immediate Past Chairman
†Honorary

March 2, 1982

The Honorable Jonathan B. Bingham
Chairman
Subcommittee on International
Economic Policy and Trade
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The American Mining Congress (AMC) supports the enactment of legislation to promote the export of U.S. goods and services by facilitating the formation and operation of export trading companies and export trade associations.

We appreciate your diligence in studying this legislation and are grateful for the attention devoted to this issue by the Subcommittee on International Economic Policy and Trade.

The American Mining Congress is an industry trade association representing most of the nation's producers of metals, coal, and industrial and agricultural minerals as well as manufacturers of mining and mineral processing machinery, equipment and supplies and engineering and consulting firms and financial institutions serving the mining industry.

Manufacturer and engineering/consulting members of the AMC Export Council, both those long active in international trade and those companies new to export, are supportive of export trading company legislative proposals currently under consideration by the Congress.

The enactment of export trading company legislation already passed by the Senate and now pending before your

Continued...

Subcommittee, as well as the Committees on the Judiciary and Banking, Finance and Urban Affairs, will ensure that U.S. business is better able to penetrate and compete in the world export market. In addition to assisting experienced exporters, export trading company legislation will encourage the entry of small and medium-sized firms into international trading markets.

We recognize that United States industry, as a whole, is today less competitive in the world export market. As you know, since 1970, the U.S. share of world exports has declined from 15% to 12% and our share of exports shipped by major industrial countries has slipped from 21.3% to 17.4%. Moreover, our nation's 1980 trade deficit was an alarming $24 billion.

We feel that immediate action is needed to remedy this problem, and we believe that now is the time to join a number of our trading partners in encouraging the operation of strong and viable export trading companies.

Again, Mr. Chairman, we appreciate your continued interest in the pending legislation and we urge prompt consideration by the Subcommittee on International Economic Policy and Trade.

The American Mining Congress stands ready to assist you and your staff, and we hope you will not hesitate to contact our office whenever you feel we might be of service.

With warmest personal regards, I am

Sincerely,

J. Allen Overton Jr

J. Allen Overton, Jr.
President

APPENDIX 6

STATEMENT SUBMITTED BY JOEL D. HONIGBERG, PRESIDENT, INTERNATIONAL BUSINESS COUNCIL MIDAMERICA

AT STAKE IS THE OPPORTUNITY FOR EXPORT GROWTH AND THE FUTURE VIABILITY IN THE INTERNATIONAL MARKETPLACE FOR ALL U.S. PRODUCERS OF GOODS AND SERVICES, AND PARTICULARLY FOR THE ENCOURAGEMENT OF SMALL TO MEDIUM SIZED AMERICAN MANUFACTURERS TO ENTER AND TO BUILD SUBSTANCE IN OVERSEAS MARKETS. THE PROVISION IN THE BILL THAT WOULD PERMIT COMPANIES WITH RELATED,AND EVEN DIRECTLY COMPETING LINES, TO FORM WHAT COULD BECOME AN UNBEATABLE SOURCE OF SUPPLY TO FACE FOREIGN COMPETITION FOR LUCRATIVE OVERSEAS CONTRACTS, IS AT THE HEART OF THE EXPORT TRADING COMPANY CONCEPT AND IS ONE OF THE REASONS THAT THIS LEGISLATION IS NEEDED NOW. WITHOUT IT, WE ARE BEING HOBBLED, AND MANY MAJOR PIECES OF BUSINESS END UP IN TOKYO, PARIS, HAMBURG, MILAN, SEOUL, KOREA, AND LONDON.

WITHOUT THE EMERGENCE OF A VIRILE AND VIGOROUS ETC INDUSTRY IN THIS COUNTY, THE YEARS AHEAD FORETELL AN ENFEEBLEMENT OF OUR EXPORT INDUSTRIES WITH CONCOMMITANT LOSS OF AMERICAN JOBS AND IRREPARABLE DAMAGE TO THE ECONOMY. THE ALREADY SLIM PERCENTAGE OF U.S. PRODUCERS PARTICIPATING IN INTERNATIONAL MARKETS WILL BECOME EVEN MORE EMBARRASSINGLY LEAN.

THE EXPERTISE, KNOW-HOW, AND TRADING EXPERIENCE EXISTS IN ABUNDANCE IN AMERICA IN THE PROFESSIONAL EXPORT-IMPORT COMMUNITY. THE EXPORT TRADING COMPANY BILL WILL COALESCE THE PRODUCTIVE POTENTIAL OF THIS GROUP AND ITS BANKING PROVISION WILL FURNISH A SIGNIFICANT FINANCIAL FRAMEWORK THAT WOULD PERMIT NEW ENTITIES TO BE FORMED WITH A MEANINGFUL, INTERNATIONAL BUSINESS REACH.

AT THE BEST, THIS PROCESS WILL TAKE TIME TO GERMINATE. THIS NEW BREED OF AMERICAN TRADING COMPANY WILL NOT SPRING FORTH BY THE MERE PASSAGE OF THE BILL NOW STALLED IN THE HOUSE OF REPRESENTATIVES. BUT, ITS PASSAGE WILL BE A GREEN LIGHT TO THE ENTIRE U.S. BUSINESS COMMUNITY TO PUT ITS ENTREPRENEURIAL AND CORPORATE HEADS TOGETHER, AND TO SALLY FORTH AND GRAB A BIGGER PIECE OF THE WORLD TRADE PIE.

A SOPHISTICATED JOB OF SELLING THE CONCEPT AND OF EDUCATING MANUFACTURERS, BANKERS, CARGO HANDLERS, PROFESSIONAL AND SERVICE

GROUPS INCLUDING TRADE ASSOCIATIONS, WILL BE NEEDED TO CATALYZE THE TREMENDOUS PRODUCTIVE CAPACITY OF THE COUNTRY'S INDUSTRIES.

INDIVIDUAL U.S. ENTERPRISES WHO CAN TODAY AFFORD THE GALLOPING COSTS OF FOREIGN MARKET ENTRY, THAT LEADS TO MEANINGFUL MARKET PENETRATION AND DISTRIBUTION, ARE BECOMING INCREASINGLY RARE BIRDS. I ASK YOU TO PUT YOUR WEIGHT AND PERSONAL VOTE BEHIND THE EXPORT TRADING COMPANY ACT OF 1981 SO THAT THIS RARE BIRD MAY BE GIVEN THE SPACE TO BECOME AIRBORNE AND TO SPREAD ITS WINGS IN THE FINEST TRADITION OF THE AMERICAN EAGLE.

IF YOU PERMIT IT TO ATTAIN A WORTHWHILE HEIGHT, AT THE BEST IT WILL SOAR ABOVE COMPETING INDUSTRIAL POWERS, AND IN SELECT PRODUCTS AND SERVICES BECOME DOMINANT WITHIN CERTAIN MARKETS; AT THE LEAST, OTHER SUPPLIER NATIONS WILL KNOW THAT OUR INDUSTRIES AND ITS EXPORT COMPANIES ARE CONTENDERS TO BE RECKONED WITH IN THE GLOBAL MARKET.

I HAVE EXPRESSED TO YOU THE ESSENCE OF MY PERSONAL BUSINESS PHILOSOPHY WHICH HAS EVOLVED OVER A PERIOD OF THIRTY YEARS AS A PROFESSIONAL EXPORTER TRANSACTING BUSINESS FOR AMERICAN MANUFACTURED GOODS IN FOREIGN MARKETS.

NOT IN THIS CENTURY HAS THE GOVERNMENT AND BUSINESS COMMUNITY HAD SUCH AN OPPORTUNITY TO JOIN HANDS AND DECLARE THAT BOTH THE PUBLIC AND PRIVATE SECTORS OF OUR NATION STAND BEHIND A CONSISTENT, LONG-TERM POLICY OF EXPORT EXPANSION.

BY PASSING THIS HISTORIC PIECE OF LEGISLATION, YOU AND THE 97TH CONGRESS HAVE AN OPPORTUNITY TO POSITIVELY EFFECT THE ECONOMIC HEALTH OF OUR NATION FOR THE NEXT 25 YEARS.

JOEL D. HONIGBERG
VICE CHAIRMAN - MARSHALL INTERNATIONAL TRADING COMPANY
PRESIDENT - INTERNATIONAL BUSINESS COUNCIL MIDAMERICA

APPENDIX 7

STATEMENT SUBMITTED BY JACK VALENTI, PRESIDENT, MOTION PICTURE EXPORT ASSOCIATION OF AMERICA, INC.

Mr. Chairman and Members of the Committee:

I am grateful to you for the opportunity of presenting the views of the Motion Picture Export Association of America, Inc. (MPEAA) on several bills before your committee which seek to promote U.S. export trade. These measures are H.R. 1321, H.R. 1648, H.R. 1799, H.R. 2123, and H.R. 2851. At the request of your committee counsel, I am also commenting on H.R. 2326, A bill now before the House Judiciary Committee. Attached is a list of the member companies of the Association.

As you will recall, almost a year ago on June 4, 1980, I testified before this subcommittee in favor of legislation to promote and expand the export trade of the United States. At that time, I described to you some of the benefits I personally have seen which exporters can derive from forming a Webb-Pomerene export association. Only my absence from the country on this hearing date, due to a prior commitment, precludes me from appearing before you and restating how critically important it is to have laws to assure that American exporters can deal effectively with a multitude of foreign trade barriers.

Permit me through this statement to make some observations that I trust will be helpful to you in your legislative deliberations.

First, I applaud your efforts to promote and increase U.S. exports to other countries. In my judgment, we ought to encourage American business and industry to increase our trade abroad, and that should be the key objective in the passage of new legislation. Anything that creates obstacles or frustrations or fear in the minds and actions of American business and industry is counter to what I believe we should seek.

Second, I feel compelled to urge this Committee to retain the Webb-Pomerene Act. I say this because during my tenure as President of the Motion Picture Export Association of America, Inc., I have seen how vitally important the Webb-Pomerene Act has been to the motion picture industry. I am sure that I do not need to emphasize that the American film industry operates abroad in a jungle of hostile actions by foreign governments and foreign cartels. Without the weapon of Webb-Pomerene, we often would be at the mercy of these hostile actions. This is our lifenet and it is a major reason for the fact that American film exports bring back to the United States large net revenues every year. For 1980 these net revenues amounted to more than $800 million, an important asset to our trade balance. So I would hope that your committee will do nothing to take away the benefits of Webb-Pomerene.

Third, with respect to the particular bills under consideration by this Committee and we have no quarrel with any of the export trade proposals now before this subcommittee, although we prefer the concepts of H.R. 1799. Also we support H.R. 2326 with clarifying amendments as proposed in an April 8 statement to the House Judiciary Committee by Mr. Martin F. Conner, Washington Counsel for the General Electric Company, on behalf of The Business Roundtable. As we view H.R. 2326, we believe it should be a complement to H.R. 1799. The latter bill would make needed refinements to current U.S. antitrust laws. The certainty provided by the certification system included within H.R. 1799 naturally is preferable to a system under which a final determination cannot be made without Court action.

Finally, I believe there is an urgent need to enact meaningful legislation to clarify many of the legal uncertainties that now beset businessmen as they attempt to deal with antitrust laws and promote our export trade. Hopefully, your committee will report legislation that will embody the best remedies to meet our national needs.

The ten member companies of the Motion Picture Export Association of America, Inc., are:

Buena Vista International, Inc.
Columbia Pictures International Corporation
Filmco, Inc.
Filmways Pictures International, Inc.
Orion Pictures Company
Paramount Pictures Corporation
Twentieth Century-Fox International Corporation
United Artists Corporation
Universal International Films, Inc.
Warner Bros. International - a division of Warner Bros. Inc.

APPENDIX 8

Letter Dated May 1, 1981, to Hon. Jonathan B. Bingham From Lawrence A. Fox, Vice President for International Economic Affairs, National Association of Manufacturers

NAM
National Association
of Manufacturers

LAWRENCE A. FOX
Vice President and Manager
International Economic Affairs Department

May 1, 1981

The Honorable Jonathan Bingham
Chairman, Subcommittee on International
Economic Policy and Trade
House Committee on Foreign Affairs
2262 Rayburn House Office Building
Washington, D.C.

Dear Mr. Chairman:

In the months ahead the House of Representatives will be considering legislation on export trading companies (H.R. 1648 and S. 734), legislation now before your Subcommittee. The National Association of Manufacturers strongly supports this initiative to encourage small and medium-sized exporters through appropriate changes in our banking and antitrust laws.

The enclosed chart book and trade report illustrates clearly the serious trade problem our country faces and the growing strength of our competitors. It is a problem we can solve, but only if we recognize it and properly address it. It would certainly be a mistake to wish it away on the basis of the few bright spots in the trade data for 1980: the $2.7 billion decrease in the merchandise trade deficit from 1979's $24.5 billion to 1980's $21.8 billion or our surplus in manufactured goods of $18.9 billion, which was indeed the second highest ever. These figures are analyzed in greater detail in the enclosed paper on the 1980 trade results. The important point is that they do not represent a genuine increase in the U.S. competitiveness but merely changes in the business cycles here and abroad. It would be foolish for us to take much encouragement from these business-cycle induced changes, which, with Europe now in a recession and the U.S. coming out of one, may soon give us different news. What we must do, rather, is to improve our fundamental competitiveness.

Put in other terms an improved U.S. export performance is absolutely essential if we are to improve the performance of the American economy as a whole. It is for that reason that NAM's Board of Directors passed a resolution calling for an export goal when they met on March 20th. A copy of this is also enclosed.

The promise of an improved export performance is real and significant. If, for example, we were to increase the share of manufactured output devoted to exports, now 20%, to 25%, that would mean an increase of about 1.2% in the real GNP growth rate. An increment of that magnitude could spell the difference between frustrating, unimpressive growth and a strong performance that would truly meet the needs of our society.

But American industry will not expand its plants to make those extra goods if we cannot sell them. In this connection the export trading company legislation now pending before you is crucial, both practically and symbolically. Foreign markets are difficult and each market requires special skills and knowledge. Export trading companies will give small and medium-sized firms access to the expertise and the necessary credit and financial know-how to take advantage of export market growth potential. That is the practical advantage. The symbolic advantage, which is almost as important, is that its passage would send a clear signal to the U.S. business community that the United States government is genuinely supportive of export expansion policies of American companies. Many of the foreign companies and products with which our own compete owe their positions in the world marketplace to the active help of their governments. Our own, in contrast, has often seemed more a critical judge than a dedicated promoter of U.S. exporters. The passage of the export trading company legislation would be justified if it did nothing more than change this perception of the business-government relationship as it affects American exports. In fact, it can be a valuable instrument in carrying out the policy of creating more export business.

Of course, important as it might be, we do not regard a law on export trading companies as the solution to the U.S. trade problem nor even of that portion of it which can be addressed through changes in trade policy. It is only a beginning. There are in fact several adjustments to U.S. law which we at NAM see as essential to changing trade from a problem to a plus for America. The most important of these are listed on the attached sheet headed "A Trade Policy Agenda".

NAM's International Economic Affairs staff would be happy to testify on export trading companies or to furnish material on this or any other aspect of U.S. trade policy where you or your staff thought our contribution might be helpful.

Sincerely,

Lawrence A. Fox
Vice President for
International Economic Affairs

LAF/dec

Enclosures : NAM Board Resolution, NAM Indicators Book, Trade Report & Trade Results for 1980

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